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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1902~~ 1903.

No. ~~422~~ 124.

THE CINCINNATI STREET RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES B. SNELL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

FILED SEPTEMBER 2, 1902.

(18,656.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 428.

THE CINCINNATI STREET RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

CHARLES B. SNELL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 2, 1902.

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a In the Supreme Court of Ohio.

THE STATE OF OHIO, }
City of Columbus. }

To the honorable the Supreme Court of the United States:

Pursuant to the command of your within writ of error, directed to us, we, under our seal, distinctly and openly, the record and proceedings within mentioned, with all things concerning the same, before the judges within named in a certain authenticated transcript to this writ attached, send, as within we are commanded.

Seal the Supreme Court of the State of Ohio.

In witness whereof, I, Lawson E. Emerson, clerk of the supreme court of Ohio, have set my hand and seal of said court, this 19th day of August, A. D., 1902.

LAWSON E. EMERSON,
Clerk Supreme Court of Ohio,
By J. G. OBERMEYRE, *Deputy.*

1 Hamilton Common Pleas Court.

CHARLES B. SNELL, Pl'ff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation under the Laws of Ohio, Def't. } Petition.

Plaintiff says the defendant is a corporation organized under the laws of Ohio.

That the defendant corporation is and was on the 3rd day of October, 1892, the owners of, and operating an electric street railway with double tracks on Eastern avenue, a public highway in the city of Cincinnati, Ohio.

That on said date plaintiff was a passenger on one of defendant's east-bound cars which stopped at a crossing on said highway between Washington and Week streets to let passengers off.

This being the crossing near plaintiff's home, he got off the car on the right side going east and in crossing over the street was struck by a west-bound car, which approached without any signal or warning at a dangerous and excessive rate of speed, hurling plaintiff violently upon the granite street, seriously cutting and wounding him on the head and bruising and injuring him in the back, so that he was rendered unconscious, *lamed* and sick, and unable to leave his room or attend to his business, and was obliged to expe*l*d one hundred dollars for medical and other services in attempting to get cured, and is still suffering from said injuries and likely to be permanently injured to his damage in the sum of five thousand ($5000) dollars.

Plaintiff avers that the defendant company was running said west-bound car at a dangerous and reckless rate of speed, and that the same was in charge of an inexperienced motorman, who failed

to sound the gong or give any signal or warning to plaintiff and caused plaintiff to be struck, wounded and injured without fault on part of plaintiff.

Wherefore, plaintiff prays judgment against the defendant in the sum of five thousand ($5000) dollars and for costs.

JOHN W. WOLFE,
Att'y for Plaintiff.

2 STATE OF OHIO, *Hamilton County,* } ss:

Charles B. Snell, being first duly sworn, says the allegations in this his petition contained are true as he believed.

CHARLES B. SNELL.

Sworn to before me and signed in my presence this 15th day of Oct., 1892.

EDWARDS RITCHIE,
[SEAL.] *Notary Public.*

40c. due notary.

(Endorsed:) No. 94336. Ham. com. pleas. Charles B. Snell, pl'ff, *vs.* The Cin'ti St. R'y Co., def't. Petition.

To clerk:

Issue summons returnable according to law.

Indorse-: Action for money and for damages; am't claimed $5000. Filed, Oct. 15, 1892. John B. Peaslee, clerk of courts. John W. Wolfe, att'y for pl'ff. No. 4464. Filed Apr. 6 1895 In supreme court of Ohio, J. B. Allen, clerk. No. 6269. Filed Sep. 21, 1898, In supreme court of Ohio. J. B. Allen, clerk. Filed Aug. 14, 1901, —— ——, clerk, by J. L. Larkin, deputy clerk. Filed Jun- 7, 1901, —— ——, clerk, by J. L. Larkin, deputy clerk. No. 7876. Filed Feb. 7, 1902, In supreme court of Ohio. L. E. Emerson, clerk.

3 Hamilton County Common Pleas Court.

CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, Defendant. } No. 94336.

Answer.

Defendant, for answer to the plaintiff's petition, admits that it is a corporation organized under the laws of Ohio; and that it is and was, at the times therein alleged, engaged in operating a street railway on Eastern avenue in the city of Cincinnati.

And for defense to the cause of action set forth in the petition, this defendant denies each and every allegations therein contained except as herein expressly admitted.

Wherefore, defendant prays that it may go hence without day, and for its costs herein expended.

PAXTON & WARRINGTON,
KITTREDGE, WILBY & SIMMONS,
Attorneys for Defendant.

STATE OF OHIO, *Hamilton County,* } *ss:*

John Kilgour, being first duly sworn, says that he is president of The Cincinnati Street Railway Company, the defendant named in the above-entitled cause, and that the statements contained in the foregoing answer are true as he verily believes.

JOHN KILGOUR.

Subscribed in my presence and sworn to before me, this 25th day of March, A. D. 1893.

JOHN J. TAYLOR, JR.,
[SEAL.] *Notary Public, Hamilton County, Ohio.*

40c. not. fee p'd by defendant.

4 Answer endorsed as follows:

No. 94366. Hamilton county common pleas court. Charles B. Snell, plaintiff, *vs.* The Cincinnati Street Railway Company, defendant. Answer. 1893, April 1, min. 447. Filed by leave. John B. Peaslee, clerk, by Rob't G. Hill, deputy. Paxton & Warrington, Kittredge, Wilby & Simmons, attorneys for defendant. Filed Apr. 6, 1895 # 4464. In supreme court of Ohio, J. B. Allen, clerk. Filed Sep. 21, 1898 # 6269. In supreme court of Ohio, J. B. Allen, clerk. Filed Jun- 7 1901. —— ——, clerk, by J. L. Larkin, deputy clerk. Filed Aug. 14 1901 —— ——, clerk, by J. L. Larkin, deputy clerk. Filed Feb. 7 1902 # 7876. In supreme court of Ohio, L. E. Emerson, clerk.

5 In the Supreme Court of Ohio.

CHARLES B. SNELL, Plaintiff in Error,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, Defendant in Error. } No. 6269.

Error to the circuit court of Hamilton county.

Record.

John W. Wolfe, Thos. L. Michie, attorneys for plaintiff in error.
Paxton, Warrington & Bouttet, attorneys for defendant in error.

Filed Oct. 4, 1898, in supreme court of Ohio.
J. B. ALLEN, *Clerk.*

In the Supreme Court of Ohio.

CHARLES B. SNELL, Plaintiff in Error,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant in Error. } (No. 6269.)

Petition in Error.

(Filed September 21, 1898.)

Charles B. Snell, the plaintiff in error, complains of The Cincinnati Street Railway Company, a corporation, defendant in error, for that at the June term, 1898, the said defendant in error recovered a judgment against the plaintiff in error in a certain cause pending in the circuit court of Hamilton county, Ohio, wherein Charles B. Snell was plaintiff in error and The Cincinnati Street Railway Company was defendant in error, wherein said court affirmed the judgment of the common pleas court of Hamilton county, Ohio, in a certain action therein pending, wherein the said Charles B. Snell was plaintiff and The Cincinnati Street Railway Company was defendant.

Plaintiff in error files herewith a transcript of the docket and journal entries in said cause and the original papers and the record in said cause.

Plaintiff in error avers that there is error in said record in this, to wit:

6 1. The circuit court of Hamilton county, Ohio, committed error in affirming the judgment of the court of common pleas in said cause.

2. The circuit court of Hamilton county, Ohio, erred in rendering judgment in favor of the defendant in error and against the plaintiff in error.

3. The circuit court of Hamilton county, Ohio, erred in affirming judgment of the court of common pleas of Hamilton county, Ohio, which overruled and denied the motion of the plaintiff in error to change the venue in the said action to the adjoining county from the said Hamilton county, most convenient to the parties to said action, pursuant to the provisions of section 5033 of the Revised Statutes of Ohio.

Wherefore, plaintiff in error prays that said judgment of the circuit court may be reversed and that it may be restored to all rights which it has lost by reason thereof.

JOHN W. WOLFE,
THOS. L. MICHIE,
Attorneys for Plaintiff in Error.

Precipe.

Hon. J. B. Allen, clerk supreme court, Columbus, O.:

The attorneys for defendant in error refuse to accept service. Let summons in error issue, directed to the sheriff of Hamilton county, Ohio.

Yours truly,

JOHN W. WOLFE,
THOS. L. MICHIE,
Attorneys for Plaintiff in Error.

Summons in Error.

(Filed September 24, 1898.)

STATE OF OHIO, }
City of Columbus. }

To the sheriff of the county of Hamilton:

You are hereby commanded to notify The Cincinnati Street Railway Company, defendant in error, that Charles B. Snell, plaintiff in error, has filed a petition in the clerk's office of the supreme court of the State of Ohio, asking a reversal of a judgment which defendant in error obtained against plaintiff in error at the June term, A. D., 1898, of the circuit court of Hamiton county, and that
7 unless the said defendant in error attend forthwith before said supreme court, said judgment may be reversed.

You will make due return of this summons October 3, A. D., 1898.

Witness my hand and the seal of said supreme court this twenty-first day of September, A. D., 1898.

[SEAL.]

JOSIAH B. ALLEN,
Clerk of Supreme Court of Ohio,
By CHAS. C. PICKERING, *Deputy.*

Sheriff's Return.

1898, September 22.—Served the within-named The Cincinnati Street Railway Company, defendant in error, by delivering a true copy of this writ, with all the endorsements thereon, personally to James A. Collins, secretary thereof, no other chief officer being found.

CHRIS. REICHEL,
Sheriff of Hamilton County, O.,
By ROB'T SWEENY, *Deputy.*

In the Circuit Court of Hamilton County, Ohio.

CHARLES B. SNELL, Plaintiff in Error,
against
THE CINCINNATI STREET RAILWAY COMPANY, Defendant in Error.

Transcript of Docket and Journal Entries.

To July 5, 1897.—Petition in error, transcript and original papers and bill of exceptions filed June 23, 1897. Common pleas No. 94336.

1897, June 23.—Summons in error issued.

1897, July 3.—Summons in error returned 1897, June 23. Served the within-named The Cincinnati Street Railway Company, defendant in error, by delivering a true copy of this writ, with all the endorsements therein, personally to James *R.* Collins, secretary thereof, no other chief officer being found. Chris. Reichel, sheriff of Hamilton Co., O., by Rob't Sweeny, deputy sheriff. Fees $1.

1898, June 16.—Min. 193. Answer of Cincinnati Street Railway Co. filed by leave.

Now come The Cincinnati Street Railway Company, defendant in error herein, and for answer to the petition of plaintiff in
8 error, says, that since the date of the entry made in this cause on December 26, 1896, overruling plaintiff's motion for a change of venue, and to reverse which the present proceedings in error are prosecuted, the plaintiff requested the cause to be set for trial and to be tried before Hon. Howard Hollister, judge, and a jury, in the common pleas court of Hamilton county, Ohio; that the cause was tried before such court and jury, without objection on plaintiff's part, and a verdict therein was rendered against the plaintiff and in favor of the defendant Street Railway Co.; that judgment was entered upon the verdict on May 22, 1897, in favor of defendant, The Street Railway Co.; that said judgment is unreversed; and that no proceedings in error have been commenced or prosecuted by plaintiff to reverse or vacate said judgment.

Wherefore, defendant in error prays that, since the order overruling the motion for change of venue was interlocutory and not final, and since no other proceedings in error have been commenced herein, the present petition in error may be dismissed and that it may go hence without day and recover its costs herein.

PAXTON, WARRINGTON & BOUTET,
Attorneys for Defendant in Error.

STATE OF OHIO, *Hamilton County,* } ss:

John Kilgour, being duly sworn, says he is president and general manager of the Cincinnati Street Railway Co., and that the facts stated in the foregoing answer are true as he believes.

JOHN KILGOUR.

Sworn to and subscribed to before me this sixteenth day of June, 1898.

J. D. MEEKER,
Notary Public, Ham. Co., O.

1898, July 11.—Min. 288.

Amendment Filed by Leave.

Now comes The Cincinnati Street Railway Company, defendant in error, and by leave of court first had and obtained and by way of amendment to its answer herein, without withdrawing any of the averments thereof, says:

That it is advised and so alleges, that section five thousand and thirty-three (5033) of the Revised Statutes of Ohio, is in conflict with the constitution of Ohio, and more particularly with section one, two and sixteen, of article one thereof, or the bill of rights; that
9 said section of said revised statutes is also in conflict with the Constitution of the United States, and more particularly with section one of article fourteen thereof; and that said revised statutes *is* null and void for these reasons.

Wherefore, defendant in error prays as in its original answer, and also that said section of said Revised Statutes be declared and held to be null and void.

PAXTON, WARRINGTON & BOUTET,
KITTREDGE & WILBY,
Attorneys for Defendant in Error.

1898, July 18.—Min. 300.

Entry of Affirmance.

This cause came on for hearing upon the petition in error, the transcript and original papers and pleadings from the court of common pleas of Hamilton county, and was argued by counsel; on consideration whereof, the court find there is no error apparent upon the record and proceedings in said court.

It is therefore considered by this court that the judgment rendered by the court below be and the same is hereby affirmed; that the defendant in error recover from the plaintiff in error its costs herein expended, taxed at $—, and that a special mandate be sent to the common pleas court for execution upon this judgment.

To all of which the plaintiff in error excepts.

1898, July 25.—Min. 367.—Reply of Charles B. Snell filed by leave.

(Duly certified.)

Court of Common Pleas, Hamilton County, Ohio.

CHARLES B. SNELL, Plaintiff,
against
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation under the Laws of Ohio, Defendant.

Additional Transcript of Docket Entries.

1895, March 30.—Min. 1222. Mandate from circuit court. Judgment reversed. Cause remanded.
1896, March 4.—Mandate from supreme court filed.
March 6.—Min. 1074. Mandate from supreme court. Judgment of circuit court affirmed.
April 7.—Min. 1703. Jury impaneled and sworn. Cause progressed first day.
April 8.—Min. 1704. Cause progressed second day.
April 9.—Min. 1705. Cause progressed third day.
April 10.—Min. 1708. Cause progressed fourth day.
April 13.—Min. 1709. Cause progressed, jury disagreed, case continued.
October 1.—Affidavit for change of venue filed.
October 1.—Motion for change of venue filed.
October 13.—Min. 1709. Entry overruling change of venue. Plaintiff excepts.
Nov. 27.—Motion for change of venue filed.
Nov. 27.—Affidavit for change of venue filed.
Dec. 26.—Min. 1796. Entry overruling motion for change of venue. Plaintiff excepts.
1897, Jan. 28.—Min. 2026. Bill of exceptions filed by leave.
April 15.—Min. 1709. Jury impaneled and sworn, cause progressed first day.
April 16.—Min. 1710. Cause progressed second day.
April 19.—Min. 1712. Cause progressed third day.
April 20.—Min. 1713. Cause progressed and verdict for defendant.
April 22.—Motion for new trial filed.
1897, Jan. 28.—Min. 2026. Entry allowing bill of exceptions.
May 22.—Min. 1731. Entry overruling motion for new trial and judgment on verdict for debt, with costs. Defendant excepts.
(Duly certified.)

Bill of Exceptions.

(Filed June 23, 1897.)

Be it remembered, that heretofore to wit, on the twenty-seventh day of November, 1896, the plaintiff, Charles B. Snell, filed his motion in the above-entitled cause for change of venue in the above-entitled action, to the adjoining county to the said Hamilton county, most convenient for both parties to the said action, pursuant to the provisions of section 5033 of the Revised Statutes of Ohio, and that on

aid date, the plaintiff in the above-entitled action, Charles B. Snell, in support of the said motion, filed his own affidavit and the several affidavits of William Schmidt, Jr., Lewis Stentz, Orlestus C. Trisler, John W. Wolfe and Thos. L. Michie, which affidavits were in the words and figures following:

"Court of Common Pleas, Hamilton County, Ohio.

11 "CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY, Defendant. } Affidavit.

"STATE OF OHIO,
Hamilton County, } *ss:*

"Charles B. Snell, being duly sworn, says that he is the plaintiff in the above-entitled action, now pending in the court of common pleas of the said Hamilton county; that the defendant in the above-entitled action is a corporation, and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the defendant keeps its principal office, and in which said county the said action is now pending, and that the affiant cannot, he believes, have a fair and impartial trial in the said county.

"(Signed) CHARLES B. SNELL.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, A. D., 1896.

"[SEAL.] JOEL C. CLORE,
"*Notary Public in and for Hamilton County.*"

40 cents due notary.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } Affidavit.

"STATE OF OHIO,
Hamilton County, } *ss:*

"William Schmidt, Jr., a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he is now, and for three years last past, has been engaged in the practice of law in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action, now pending in the court of common pleas, of the said Hamilton county; that The Cincinnati Street Railway Co., the defendant in the above-entitled action, is a corporation, and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the said defend-

ant keeps its principal office, and in which said county the
12 said action is now pending; and that this affiant believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in said county.

"(Signed) WM. SCHMIDT, JR.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, 1896.

"[SEAL.] JOHN C. ROGERS,

"*Notary Public in and for Hamilton County, O.*"

40 cents due notary.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } Affidavit.

"STATE OF OHIO, *Hamilton County,* } *ss:*

"Lewis Stentz, a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he is now and for one year last past, has been engaged in the business of life insurance, as managing agent of the Northwestern Life Assurance Company, and has resided for the past five (5) years in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action, now pending in the court of common pleas of the said Hamilton county; that The Cincinnati Street Railway Company, the defendant in the above-entitled action, is a corporation and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the said defendant keeps its principal office, and in which said county the said action is now pending, and that this affiant believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county.

"(Signed) LEWIS STENTZ.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, 1896.

"[SEAL.] JOEL C. CLORE,

"*Notary Public in and for Hamilton County, O.*"

40 cents due notary.

13 "Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } Affidavit.

"STATE OF OHIO, *Hamilton County,* } *ss:*

"Orlestus C. Trisler, a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he is now and for three (3) years last past, has been engaged in the practice of law in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action, now pending in the court of common pleas in the said Hamilton county; that The Cincinnati Street Railway Co., the defendant in the above-entitled action, is a corporation and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the said defendant keeps its principal office, and in which said county the said action is now pending; and that this affiant believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county.

"(Signed) ORLESTUS C. TRISLER.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, 1896.

"JOHN C. ROGERS,
"[SEAL.] *Notary Public in and for Hamilton County, Ohio.*"

40 cents due notary.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } Affidavit.

"STATE OF OHIO, *Hamilton County,* } *ss:*

"John W. Wolfe, a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he is now
14 and for twelve years last past, has been engaged in the practice of law in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action, now pending in the court of common pleas of said Hamilton county that The Cincinnati Street Railway Company, the defendant in the above-entitled action, is a corporation and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the said defendant keeps its principal office, and in which said county the said action is now pending, and that this affiant believes that the

said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county.

"(Signed) JOHN W. WOLFE.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, 1896.

"[SEAL.] JOHN C. ROGERS,

"*Notary Public in and for Hamilton County, O.*"

40 cents due notary.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } Affidavit.

"STATE OF OHIO, *Hamilton County,* } *ss:*

"Thos. L. Michie, a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he is now and for four years last past, has been engaged in the practice of law in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action now pending in the court of common pleas of said Hamilton county; that The Cincinnati Street Railway Company, the defendant in the above-entitled action, is a corporation and has more than fifty stockholders in the said Hamilton county, Ohio; in which said county the said defendant keeps its principal office, and in which said county the said action is now pending; and that this affiant believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county.

"(Signed) THOMAS L. MICHIE.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, 1896.

"[SEAL.] JOHN C. ROGERS,

"*Notary Public in and for Hamilton County, O.*"

15 40 cents due notary.

That the above was all the evidence introduced by either the plaintiff or the defendant in support of or against said motion.

That on the twenty-sixth day of December, 1896, the said motion came on for hearing upon the said affidavits hereinbefore set out, before the honorable common pleas court of Hamilton county, Ohio, and was argued by counsel and submitted to the court; and thereupon the honorable court of common pleas of Hamilton county, Ohio, overruled and denied the said motion; to which action and ruling of the court in denying and overruling the said motion, the said Charles B. Snell, the plaintiff in the above-entitled action, then and there excepted, and now comes and tenders this, his bill of ex-

ceptions, and prays that the same may be allowed, signed, sealed and made a part of the record in the above-entitled cause, which is hereby accordingly done.

Witness the hand and seal of the court this twenty-eighth day of January, 1897.

M. F. WILSON,
Judge, Court of Common Pleas.

Supreme Court of Ohio.

CLERK'S OFFICE, COLUMBUS, *July 12th*, 1899.

I, Josiah B. Allen, clerk of the supreme court of Ohio, do hereby certify that the foregoing is a true copy of the printed record filed in this court in cause No. 6269, Charles B. Snell *vs.* The Cincinnati Street Railway Co., and used by said court in consideration of said cause.

Witness my hand and the seal of said court this 12th day of July, A. D., 1899.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk*,
By JOHN P. DANA, *Deputy*.

THE STATE OF OHIO, *City of Columbus*, } *ss:*

In the Supreme Court of Ohio, January Term, A. D. 1899.

16 *Certified Transcript of Docket and Journal Entries.*

In the record and proceedings then and there had and held, among other things, is the following to wit:

CHARLES B. SNELL, Plaintiff in Error, *vs.* THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant in Error.	# 6269. Error to the Circuit Court of Hamilton County.

Sept. 21, 1898. Petition in error and præcipe filed.
" " " Circuit court transcript filed.
" " " Original papers and bill of exceptions filed.
" " " Summons issued for defendant in error, directed to the sheriff of Hamilton Co., returnable Oct. 3rd, A. D., 1898.
" 23, " Part of papers taken by New Franklin Printing Co.
" 24, " Summons returned and filed, endorsed: "1898, September 22nd.—Served the within-named The Cin-*Cin*cinnati Street Railway Company, defendant in error, by delivering a true copy of this writ, with all the endorsements thereon, personally, to James A. Collins, secretary thereof, no other chief officer being found." "Chris. Reichel, sheriff of

Ham. Co., O., by Rob't Sweeny, deputy." "Fees, $1.24."

Oct. 4, " Papers returned.
" " " Printed record filed.
" 5, " Printer's receipted bill filed.
" 6, " Proof of service of printed record filed.
" 20, " Plaintiff's printed brief & proof of service filed.
Nov. 5, " Motion by plaintiff to advance, notice & affidavit filed.
" 10, " Typewritten brief of defendant on motion filed.
" 22, " Journal entry: "Ordered by the court that said motion be, and the same is hereby, overruled. Case will take its place on the docket by its former number, 4464. Defendant's brief to be filed in 60 days. Request for oral argument noted." O. B. No. 16, pg. 220.
Feb'y 9, 1899. Defendant's printed brief and proof of service filed.
May 9, " Journal entry: "This cause came on to be heard upon the transcript of the record of the circuit court of Hamilton county and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court that the judgment of the said circuit court be, and the same hereby is, reversed, with costs; and, proceeding to render the judgment which the court should have rendered, it is considered and adjudged that the judgment of the court of common pleas be, and the same is
17 hereby, reversed, with costs, for error in overruling the motion of the plaintiff for a change of venue.

It is further considered and adjudged that the plaintiff in error recover of the defendant in error his costs in this court and in the circuit court expended, to be taxed, and that the cause be remanded to the court of common pleas, with directions to grant the change of venue and for further proceedings according to law.

Ordered, that a special mandate be sent to the court of common pleas of Hamilton county to carry this judgment into execution.

Ordered, that a copy of this entry be certified to the clerk of the circuit court of Hamilton county 'for entry.'" O. B. No. 16, pg. 392.
May 16, 1899. Mandate issued.
" " " Original papers sent to clerk.
June 8, " Journal entry: "On motion of said defendant in error, The Cincinnati Street Railway Company, this court order it to be certified and made part of the record in this case and of the judgment and entry of reversal heretofore rendered and made herein that in the rendition of said judg-

ment of reversal it became and was material to the case to determine whether the certain act of the General Assembly of the State of Ohio, known as and numbered section 5033 of the Revised Statutes of said State of Ohio was of binding force and validity against the said Cincinnati Street Railway Company, a corporation created by and existing under the laws of said State.

And the court order it to be further certified that said defendant in error claimed and asked this court to hold that said act, to wit, section 5033 of said Revised Statutes, is repugnant to the first section of the XIV amendment of the Constitution of the United States.

And the court order it to be further certified that the decision of the court was and is in favor of the validity of said statute.

It is hereby further certified that this court is the highest court of law and equity in the State of Ohio in which a decision of this case can be had." O. B. No. 16, pg. —.

June 8, 1899. Supersedeas bond filed.
July 18, " Copy of writ of error filed.

STATE OF OHIO, *City of Columbus,* } ss:

Supreme Court of Ohio.

I, Josiah B. Allen, clerk of the supreme court of the State of Ohio, do hereby certify that the foregoing transcript of docket and journal entriss in the case of Charles B. Snell against The Cincinnati Street Railway Company, No. 6269, is truly taken and correctly copied from the records of said court, to wit, from Minute Book No. 19, page 559, and Order Book No. 16, pages 220 and 392.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said supreme court this 8th day of June, A. D. 1899.

[Seal of the Supreme Court of the State of Ohio.]

JOSIAH B. ALLEN, *Clerk,*
By JOHN P. DANA, *Deputy.*

18 (Endorsed:) In the supreme court of the State of Ohio. The Cincinnati Street Railway Company, plaintiff in error, *vs.* Charles B. Snell, defendant in error. Certified transcript.

19 STATE OF OHIO, }
City of Columbus. }

Supreme Court of the State of Ohio, of the Term of January, A. D. 1901, to wit, Tuesday, February 26th.

THE CINCINNATI STREET RAILWAY COMPANY
vs.
CHARLES B. SNELL.
} Error to the Circuit Court of Hamilton County.

This day there was duly filed in this court a certain mandate from the Supreme Court of the United States, which is as follows, to wit:

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the supreme court of the State of Ohio, Greeting:

Whereas, lately in the supreme court of the State of Ohio, before you, or some of you, in a cause between Charles B. Snell, plaintiff in error, and The Cincinnati Street Railway Company, defendant in error, wherein the judgment of the said supreme court, entered in said cause on the 9th day of May, A. D., 1899, was in favor of the said plaintiff in error, Charles B. Snell, and against the said defendant in error, as by the inspection of the transcript of the record of the said supreme court, which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord, one thousand nine hundred, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered and adjudged by this court, that the writ of error in this cause be, and the same is hereby, dismissed for the want of jurisdiction.

DECEMBER 17, 1900.

20 And the same is hereby remanded, to you, the said judges of the said supreme court of the State of Ohio, in order that such proceedings may be had in the said cause, in conformity with the judgment and decree of this court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of error notwithstanding.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 12th day of February, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

I, Josiah B. Allen, clerk of the supreme court of the State of Ohio, do hereby certify that the foregoing mandate is truly taken and correctly copied from the records of said court, to wit: from Order Book No. 17, page 386.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said supreme court this 12th day of March, A. D., 1901.

[Supreme Court Seal.]

JOSIAH B. ALLEN, *Clerk*,
By JOHN P. DANA, *Deputy*.

(Endorsed:) No. 7876. Supreme court of the State of Ohio. The Cincinnati Street Railway Co., *vs.* Charles B. Snell. Certified copy of entry. Filed Mar. 13, 1901, Geo. B. Harte, clerk. Entered Mar. 15, 1901, Minutes 89. Filed Jun- 7, 1901, J. L. Larkin, deputy clerk. Filed Aug. 14, 1901, J. L. Larkin, deputy clerk. Filed Feb. 7, 1902, in supreme court of Ohio. L. E. Emerson, clerk.

21 Court of Common Pleas, Hamilton County, Ohio.

CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } No. 94336. Motion.

Now comes Charles B. Snell, the plaintiff in the above-entitled action and moves the honorable court for a change of venue of the above-entitled action to the adjoining county to the said Hamilton county, most convenient to both parties, pursuant to the provisions of section 5033 of the Revised Statutes of Ohio.

Plaintiff alleges as the ground of his said motion that the defendant, The Cincinnati Street Railway Company is a corporation having more than fifty (50) stockholders and keeps its principal office and transacts its principal business in the said Hamilton county, and that the plaintiff cannot, as he believes, have a fair and impartial trial in the said Hamilton county.

The plaintiff files herewith in support of his said motion, his own affidavit and the several affidavits of five (5) credible persons residing in the said Hamilton county.

JOHN W. WOLFE,
THOS. L. MICHIE,
Att'ys for Plaintiff.

(Endorsed:) No. 94336. Common pleas court. Charles B. Snell, plaintiff, *vs.* The Cincinnati Street Railway Co., defendant. Motion. Filed Nov. 27, 1896, Geo. Hobson, clerk of courts. Filed June 7, 1901, J. L. Larkin, deputy clerk. Filed Aug. 14, 1901, J. L. Larkin, deputy clerk. Filed Feb. 7, 1902, in supreme court of Ohio. No. 7876. L. E. Emerson, clerk.

22 Court of Common Pleas of Hamilton County, Term of April, 1901, *A. D. 189–*.

CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, Defendant.

This cause came on this day to be heard again on the motion and the affidavit of plaintiff and the affidavits of William Schmidt, Jr., Lewis Stentz, Orlestus C. Trisler, John W. Wolfe and Thomas L. Michie in support thereof, for a change of venue filed by the plaintiff herein on November 27, 1896, under section 5033 (now 5030) of the Revised Statutes of Ohio, said affidavits being set forth in the bill of exceptions allowed and filed herein in this court on January 28, 1897, and it appearing to the court from the mandate from the supreme court of Ohio, filed herein on May 17, 1899, directing reversal of the judgment of this court on said motion, that the said cause shall be sent to an adjoining county for trial, and it appearing to the court that it is convenient for the parties to this cause that it should be removed for trial to the court of common pleas of Clermont county, Ohio, said Clermont county being a county adjoining this county, it is therefore ordered by the court that the place of trial of the above-entitled action be and the same hereby is changed to the county of Clermont, State of Ohio, and the court hereby orders and directs that the clerk of this court shall forthwith transmit to the clerk of the court of common pleas of the said Clermont county, the pleadings and papers in this case with a duly certified copy of this entry, to all of which the Cincinnati Street Railway Company by its counsel now and here excepts.

STATE OF OHIO, *Hamilton County*, } *ss*:

I Geo. B. Harte, clerk of the court of common pleas within and for Hamilton county, do hereby certify that the foregoing is a true and correct copy of an order made by the said court on the
23 11th day of May, 1901, Min. 359.

Witness my hand and the seal of said court, at Cincinnati, this 6th day of June, A. D. 1901.

GEO. B. HARTE, *Clerk*,
By WALTER LANFERSIEK, *Deputy*.

(Endorsed:) Court of common pleas of Hamilton county. Chas. B. Snell, *vs.* The Cin. St. R'y Co. Certified copy of entry granting change of venue. Filed June 7, 1901, J. L. Larkin, deputy clerk. Filed Aug. 14, 1901, J. L. Larkin, deputy clerk. Filed Feb. 7, 1902, in supreme court of Ohio, L. E. Emerson, clerk. No. 7876.

24 Court of Common Pleas, Clermont County, Ohio.

CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, Defendant.
} Motion to Remand Case.

Now comes the defendant, The Cincinnati Street Railway Company, and moves the court for an order remanding this cause to the court of common pleas of Hamilton county, Ohio, for the following reasons:

1. That said court of common pleas of Clermont county, Ohio, is without jurisdiction to hear and determine said cause.

2. That the court of common pleas of Hamilton county, Ohio, erred in granting the motion of the plaintiff herein for a change of venue.

3. That the court of common pleas of Hamilton county, Ohio, erred in ordering that the place of trial of the above-entitled cause be changed from Hamilton county, Ohio, to said Clermont county, Ohio.

4. That section 5033 of the Revised Statutes of Ohio, under the provisions of which said cause was ordered removed to said court of common pleas of Clermont county, Ohio, by said court of common pleas of Hamilton county, Ohio, is in conflict with the constitution of the State of Ohio and with the Constitution of the United States, and particularly with article XIV in amendment of said Constitution of the United States.

PAXTON & WARRINGTON,
FRAZIER & HICKS,
DAVIS & WOODLIEF,
Attorneys for the Cincinnati Street Railway Company.

(Endorsed:) No. 11601. Court of common pleas, Clermont county, Ohio. Charles B. Snell, plaintiff, against The Cincinnati Street Railway Company, defendant. Motion to remand case. Filed June 26, 1901, J. L. Larkin, deputy clerk. Filed Aug. 14, 1901, J. L. Larkin, deputy clerk. Filed Feb. 7, 1902, in supreme court of Ohio, L. E. Emerson, clerk. No. 7876.

25 Court of Common Pleas, Clermont County, Ohio.

CHARLES B. SNELL, Plaintiff,
against
THE CINCINNATI STREET RAILWAY COMPANY, Defendant.
} Bill of Exceptions. No. 11601.

Be it remembered, that this cause came on to be heard, before the Hon. John S. Parrott, judge of the court of common pleas of Clermont county, Ohio, at the April term, A. D. 1901, to wit, on the 29th day of June, 1901, on the motion of the defendant, The Cincinnati Street Railway Company, to remand this cause to the court of common pleas of Hamilton county, Ohio, for trial, for the reasons set

out in said motion; and the defendant, in support of said motion offered in evidence the affidavits of Charles B. Snell and Wm. Schmidt, Jr., Lewis Stentz, Orlestuc C. Trisler, John W. Wolfe and Thomas L. Michie, copies of which said affidavits are hereto attached and made a part hereof respectively marked Exhibits A, B, C, D, E and F.

And this being all the evidence offered in the cause by either the plaintiff or defendant, the court on consideration of said motion, found the same to be not well taken and overruled the same; to which ruling of the court the defendant then and there excepted.

And thereupon the defendant presented to the court on said 29th day of June, A. D., 1901, this, its bill of exceptions, having theretofore presented the same for examination to counsel for the plaintiff, and the court find said bill of exceptions in all respects to be a true and correct bill of exceptions taken on the trial of said motion, allows and signs the same as and for a true bill of exceptions and orders that the same be made a part of the record in this cause, but not spread upon the journal.

JOHN S. PARROTT,
Judge of the Court of Common Pleas Court.

26 EXHIBIT A.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, Defendant. } Affidavit.

"STATE OF OHIO, *Hamilton County,* } *ss:*

"Charles B. Snell, being duly sworn, says that he is the plaintiff in the above-entitled action, now pending in the court of common pleas, of the said Hamilton county; that the defendant in the above-entitled action is a corporation, and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the defendant keeps its principal office, and in which said county the said action is now pending, and that this affiant cannot, as he believes, have a fair and impartial trial in the said county.

"(Signed) CHARLES B. SNELL.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, A. D., 1896.

"JOEL C. CLORE,
"[SEAL.] *Notary Public in and for Hamilton County, Ohio.*"

40 cents due notary.

27 EXHIBIT B.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } Affidavit.

"STATE OF OHIO, *Hamilton County,* } *ss:*

"William Schmidt, Jr., a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he is now, and for three years last past, has been engaged in the practice of law in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action, now pending in the court of common pleas, of the said Hamilton county; that The Cincinnati Street Railway Co., the defendant in the above-entitled action, is a corporation, and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county said defendant keeps its principal office, and in which said county the said action is now pending; and that this affiant believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county.

"(Signed) WM. SCHMIDT, JR.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, 1896.

"[SEAL.] JOHN C. RODGERS,
"*Notary Public in and for Hamilton County, Ohio.*"

40 cents due notary.

28 EXHIBIT C.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } Affidavit.

"STATE OF OHIO, *Hamilton County,* } *ss:*

"Lewis Stentz, a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he is now and for one year last past, has been engaged in the business of life insurance, as managing agent of the Northwestern Life Assurance Company, and has resided for the past five (5) years in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the

above-entitled action, now pending in the court of common pleas of the said Hamilton county; that The Cincinnati Street Railway Company, the defendant in the above-entitled action, is a corporation and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the defendant keeps its principal office, and in which said county the said action is now pending, and that this affiant believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county.

"(Signed) LEWIS STENTZ.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, A. D., 1896.

"[SEAL.] JOEL C. CLORE,

"*Notary Public in and for Hamilton County, Ohio.*"

40 cents due notary.

29 EXHIBIT D.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } Affidavit.

"STATE OF OHIO, *Hamilton County,* } ss:

"Orlestus C. Trisler, a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he is now and for three (3) years last past, has been engaged in the practice of law in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action, now pending in the court of common pleas in the said Hamilton county; that The Cincinnati Street Railway Co., the defendant in the above-entitled action, is a corporation and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the said defendant keeps its principal office, and in which said county the said action is now pending; and that this affiant believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county.

"(Signed) ORLESTUS C. TRISLER.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, 1896.

"[SEAL.] JOHN C. ROGERS,

"*Notary Public in and for Hamilton County, Ohio.*"

40 cents due notary.

30 EXHIBIT E.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } Affidavit.

"STATE OF OHIO, *Hamilton County,* } ss:

"John W. Wolfe, a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he is now and for twelve years last past, has been engaged in the practice of law in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action, now pending in the court of common pleas, in the said Hamilton county; that The Cincinnati Street Railway Company, the defendant in the above-entitled action, is a corporation and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the said defendant keeps its principal office, and in which said county the said action is now pending, and that this affiant believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county.

"(Signed) JOHN W. WOLFE.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, 1896.

"[SEAL.] JOHN C. RODGERS,
"*Notary Public in and for Hamilton County, O.*"

40 cents due notary.

31 EXHIBIT F.

"Court of Common Pleas, Hamilton County, Ohio.

"CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation, Defendant. } Affidavit.

"STATE OF OHIO, *Hamilton County,* } ss:

"Thomas L. Michie, a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he is now and for four years last past, has been engaged in the practice of law in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action now pending in the court of common pleas of said Hamilton county; that The Cincinnati

Street Railway Company, the defendant in the above-entitled action, is a corporation and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the defendant keeps its principal office, and in which said county the said action is now pending; and that this affiant believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county.

"(Signed) THOMAS L. MICHIE.

"Sworn to before me and subscribed in my presence this twenty-seventh day of November, 1896.

"[SEAL.] JOHN C. RODGERS,

"*Notary Public in and for Hamilton County, O.*"

40 cents due notary.

31½ (Endorsed:) No. 11601. Court of common pleas, Clermont county, Ohio. Charles B. Snell, plaintiff, *vs.* The Cin'ti St. R'y Co. def't. Bill of exceptions. On motion to remand case. Filed June 29, 1901, J. L. Larkin, dep. clerk. Filed C. C., Aug. 14, 1901. J. L. Larkin, deputy clerk. Filed Feb. 7, 1902, in supreme court of Ohio. 7876. L. E. Emerson, clerk.

32 Court of Common Pleas, Clermont County, Ohio.

CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, Defendant. } Motion. No. 11601.

Now comes the defendant and moves the court to set aside the verdict heretofore rendered in this cause and to grant it a new trial for the following reasons:

1st. The court erred in its rulings on the motion filed June 26, 1901, herein as to the law of this case.

2nd. The court erred in overruling the motion of the defendant filed herein on the 26th day of June, 1901, to remand this cause to the court of common pleas of Hamilton county, Ohio.

PAXTON & WARRINGTON,
FRAZIER & HICKS,
DAVIS & WOODLIEF,
Att'ys for Def't.

(Endorsed:) No. 11601. Court of common pleas, Clermont county, Ohio. Charles B. Snell, plaintiff, *vs.* The Cincinnati Street Railway Company, defendant. Motion for new trial. Filed July 1, 1901, J. L. Lardin, deputy. Filed Aug. 14, 1901, J. L. Lardin, deputy. Filed Feb. 7, 1902, in supreme court of Ohio. L. E. Emerson, clerk. No. 7876.

33 The Court of Common Pleas of Hamilton County, Ohio.

CHARLES B. SNELL, Plaintiff, *against* THE CINCINNATI STREET RAILWAY Company, a Corporation under the Laws of Ohio, Defendant.	94336. To Oct. 24, 1892. Petition Filed October 15, 1892. Action for Money as Damages. Am't Cl'm'd, $5,000.00.

Jno. W. Wolfe.

1892, Oct. 15.—Summons issued.

Oct. 24.— " returned Cincinnati Oct. 20 1892, served the within-named defendant, The Cincinnati Street Railway Company, a corporation under the laws of Ohio, by delivering a true copy of this writ with all the endorsements thereon personally to J. A. Collins, secretary thereof, no other chief officer being found. Val Heim, sheriff by Peter Weigold deputy. Sheriff's fees $1.20.

1892, Nov. 12.—Default for answer.

1893, March 9.—Demand for struck jury filed by def't.

1893, April 1.—Min. 447 answer filed by leave.

1893, Dec. 1.—Min. 1772 venire for struck jury returned and called.

Special venire issued.

The *venire facias* heretofore issued for struck jurors herein returnable this day at 10 o'clock a. m., was duly returned by the sheriff of this county with his endorsement thereon as follows, to wit: Cincinnati Dec. 1st 1893 served the within-named John Wood, Jacob Young, Geo. W. Grant, Bernard Wessel, Frank Peters, Thomas Long and Frank Greving at their usual place of residence; also served James Trevor, George H. Brown, Jeremiah Reardon, Elijah Chinn and *and* James Scott personally and Alfred Tennyson Brown, Frank P. Hogue, Michael Bonfield and Thomas Williams were not found. Sh'ff fees $6.00. R. M. Archibald sh'ff by W. Copeland deputy.

34 And upon calling the same in open court the following persons appeared in answer thereto namedly John Wood, James Trevor, George H. Brown, Jacob Young, Bernard Wessel, Jeremiah Reardon, Elijah Chinn, Frank Peters, Thomas Long, James Scott and Frank Greving, and good and legal cause shown the court excused George H. Brown Jeremiah Reardon and Frank Greving was excused by reason of challenge, and the panel being incomplete the court made the following order to wit:

To clerk:

Issue venire for the following-named persons to serve in the above case returnable forthwith to serve as special jurors.

Charles Curran, Price Hill; Wm. McCraith, 161 Gilbert Ave.; Charles Twiford, 101 Wade; Charles Barker, 233 Central Ave.; H. A. Trimpe, 542 Eastern Ave.; James Allen 120 Poplar St., which — now accordingly done.

Dec. 1.—Min. 1773. Special venire for jurors returned and called.

The special venire heretofore issued for special jurors returnable this day forthwith was duly returned by the sheriff of this county, with his indorsement thereon as follows, to wit: Dec. 1st, 1893, served

the within-named Charles Curran, Charles Twiford, H. A. Trimpe, Wm. McCraith, Charles Barker and James Allen personally. Sheriff'-fee $6.00. R. M. Archibald, sheriff.

And upon calling the same in open court the following persons appeared in answer thereto namely Charles Curran, Charles Twiford, H. A. Trimpe, Wm. McCraith, Charles Barker and James Allen and the panel was completed.

Dec. 1.—Application for stenographer filed.

Dec. 1.—N. F. Dean ordered to report testimony.

Dec. 1.—Min. 1773. Jury sworn; cause progressed first day.

This day came the parties herein by their attorneys and came the following-named persons to wit:

1. John Wood	5. Elijah Chinn	9. Chas. Curran.
2. James Trever.	6. Frank Peters.	10. Chas. Twiford.
3. Jacob Young	7. Thomas Long	11. Wm. McCraith.
4. Bernard Wessell.	8. James Scott.	12. Chas. Barker

who were duly impaneled and sworn herein according to law, and thereupon the case came on for hearing on the pleadings and
35 evidence, and the said jury having heard the testimony as far as adduced and the hour of adjournment having arrived this cause and jury was continued until tomorrow morning at ten o'clock.

Dec. 2.—Min. 1774. Security for stenographer'-fees approved etc.

Upon application of the attorney for defendant the services of N. F. Dean an official stenographer are granted upon satisfactory security for the per diem fees of said stenographer in the above case being given and the Cincinnati Street Railway Company by John Harris being offered as security the court approves the same.

Dec. 2.—Min. 1774. Evidence withdrawn. Verdict for defendant.

This day again came the parties herein by their attorneys and also came the jury heretofore impaneled and sworn and the evidence of plaintiff being heard, the defendant having moved the court to arrest the testimony from the jury and return a verdict for defendant and the arguments of counsel being heard thereon. On consideration thereof the court ordered the jury to return the following verdict to wit:

We the jury on the issue joined find for the defendant.
(Signed) CHARLES BARKER, *Foreman.*

Dec. 2.—Certificate given to N. F. Dean, O. S., $15.00.

Dec. 4.—Motion for new trial filed.

Dec. 9.—Min. 1783. Motion for new trial overruled. Judgment for defendant. Plaintiff excepts.

This cause coming on for hearing on the motion of the plaintiff to set aside the verdict and for a new trial herein, the court on consideration thereof overruled the same.

It is therefore considered by the court that the said defendant go

hence without day and recover from the said plaintiff its costs herein expended, to all of which plaintiff excepts.

Dec. 30.—Min. 1806. Entry allowing bill of exceptions.

This day came the plaintiff by his counsel and presented to the court his certain bill of exceptions and moved that the same be allowed and filed, and the court finding the same to be true doth hereby allow, sign, seal and order the same made a part of the record
36 in this case and be filed which is now accordingly done.

Dec. 30.—Min. 1806. Bill of exceptions filed by leave. (See circuit court No. 1811.)

1895, Mar. 30.—Min. 1222. Mandate from circuit court. Judgment reversed cause remanded.

THE STATE OF OHIO, }
Hamilton County, }

Circuit Court of Hamilton County, January Term, A. D. 1895.

To the honorable the court of common pleas of Hamilton county, Greeting:

Whereas in a certain action which was lately heard in our said circuit court wherein C. B. Snell was plaintiff and The Cincinnati Street Railway defendant, the following entry was entered on the 30th day of March, A. D., 1895, viz:

This day came the parties by their attorneys and this cause having been on a former day of this term heard and submitted and taken under advisement by the court on consideration therefore the court find that in the record and proceedings aforesaid there is error manifest upon the face of the record to the prejudice of the plaintiff in error in this to wit:

That the common pleas court of Hamilton county arrested the testimony from the jury and directed a verdict for the defendant.

It is, therefore, considered, ordered and adjudged by this court that the judgment and proceedings of said court of common pleas be and the same hereby are set aside, reversed and held for naught and that plaintiff in error be restored to all things which he has lost by reason of said judgment. That said action be and it hereby is remanded to said court of common pleas of Hamilton county, Ohio, to be proceeded in according to law and the rights of said parties.

That said defendant in error pay the costs of this proceeding in error to be taxed and in default thereof that an execution issue therefor and that a special mandate be *such* to said court of com-
37 mon pleas to carry this judgment into execution.

To all of which rulings, orders and judgment of the court the said defendant in error by his counsel excepts.

I, John B. Peaslee, clerk of circuit court of Hamilton county, do hereby certify that the above is a correct copy of the entry made by said court in said cause as appears by the journal of said court page 99.

Witness my hand and the seal of said court at Cincinnati this 30th day of March, 1895.

JOHN B. PEASLEE,
Clerk Circuit Court,
[SEAL.] By H. FURST, *Deputy.*

1896, March 4.—Mandate from supreme court filed.
1896, March 6.—Min. 1074 Mandate from supreme court. Judgment circuit court affirmed.

THE STATE OF OHIO, }
City of Columbus. }

Supreme Court of the State of Ohio, January Term, A. D. 1896.

THE CINCINNATI STREET RAILWAY CO. } Error to the Circuit Court
vs. } of Hamilton County.
CHARLES B. SNELL. }

This cause came on to be heard upon the transcript of the record of the circuit court of Hamilton county and was argued by counsel. On consideration whereof it is ordered and adjudged by this court that the judgment of the said circuit court be and the same is hereby affirmed; and it appearing to the court that there were reasonable grounds for this proceeding in error it is ordered that no penalty be assessed herein. It is further ordered that the defendant in error recover from the plaintiff in error his costs herein expended, taxed at $—.

Ordered, that a special mandate be sent to the court of common pleas of Hamilton county, to carry this judgment into execution.

Ordered, that a copy of this entry be certified to the clerk of the circuit court of Hamilton county, "for entry."

38 I, Josiah B. Allen, clerk of the supreme court of Ohio, do hereby certify that the foregoing entry is truly taken and correctly copied from the journal of said court.

Witness my hand and the seal of said court this 3rd day of March, A. D., 1896.

JOSIAH B. ALLEN, *Clerk,*
[SEAL.] By GEORGE H. KOLKER, *Deputy.*

STATE OF OHIO, }
City of Columbus. }

Supreme Court of Ohio.

To the honorable court of common pleas within and for the county of Hamilton, Ohio, Greeting:

We do hereby command you, that you proceed, without delay, to carry the within and foregoing judgment of our supreme court of Ohio, in the cause of The Cincinnati Street Railway Co. *vs.* Charles B. Snell into execution, the petition in error herein and heretofore granted, to the contrary notwithstanding.

Witness, Josiah B. Allen, clerk of our said supreme court of Ohio, at Columbus this 3rd day of March, 1896.

JOSIAH B. ALLEN, *Clerk*,
[SEAL.] By GEORGE H. KOLKER, *Deputy*.

Clerk's costs.....	$5.00	Paid by Kittredge, W. & S.
Clerk's costs.....	2.00	Paid by J. W. Wolfe.
Printing record.....	87.30	Paid by Kittredge, W. & S.

I, George Hobson, clerk of the circuit court of Hamilton county, do hereby certify that the above is a correct copy of the entry made by said court in said cause as appears by the journal of the said court page 87.

Witness my hand and the seal of the said court at Cincinnati this 6th day of March, A. D., 1896.

GEORGE HONSON,
Clerk Circuit Court,
By JOHN J. WENNER, *Deputy*.

1896, April 7.—Min. 1703. Jury impaneled and sworn Cause progressed first day.

39 Court met pursuant to adjournment, Hon. Dan Thew Wright, presiding.

Roll-call of Petit Jury.

This day came the following jurors and answered to their names:

1. Robert Herwig	5. C. O. Passmore	9. S. Ronsheim.
2. E. A. Gartner	6. S. W. Bard	10. W. H. Brinkman
3. A. J. Stern	7. Jos. Honhorst	11. C. L. Enyart
4. John Burnet	8. John McKibben	12. H. N. Reno.

Whereupon H. N. Reno was challenged by the plaintiff for cause and the panel being incomplete, the court, by consent of all parties, ordered the court constable to summons as many good and suitable persons as may be necessary to complete the panel and Chas. Roll was called and accepted as juror and the panel being complete, said jury was duly impaneled and sworn according to law, and thereupon said cause came on to be heard upon the pleadings and evidence. And the said jury having heard the testimony adduced in part said cause was continued until tomorrow morning at 10 o'clock.

1896, April 8.—Chas. B. Snell, pl't'ff, sworn.

1896, April 8.—Min. 1704, Cause progressed 2nd day.

This day again came the said parties by their attorneys, and also came the said jury heretofore impaneled and sworn and thereupon the trial proceeded upon the pleadings and evidence. And the said jury having heard more of the testimony adduced said cause was continued until tomorrow morning at 10 o'clock.

1896, April 9.—Min. 1705 Cause progressed 3rd day.

This day again came the said parties, herein, by their attorneys,

and also came the jury heretofore impaneled and sworn, and there upon the trial proceeded.

And the said jury having heard the remaining testimony, said cause was continued until tomorrow morning at 10 o'clock.

April 10, 1896.—Min. 1708. Cause progressed 4th day.

This day again came the said parties herein by their attorneys, and also came the said jury heretofore impaneled and sworn
40 and thereupon the trial proceeded. And the said jury having heard the argument, and charge of the court, retired to their room in charge of the court constable for deliberation.

And the hour of adjournment having arrived, said jury was discharged until Monday morning at 10 o'clock.

1896, April 13.—Min. 1709. Cause progressed. Jury disagreed, case continued.

This day again came the said parties by their attorneys, and also came the said jury heretofore impaneled and sworn herein, and retired to their room, in charge — the court constable, for further consultation. And now comes the said jury into open court and state that they are unable to agree upon a verdict, whereupon they are by the court discharged from further consideration of the case, and the case is continued.

1896, Oct. 1.—Affidavits for change of venue filed.

1896, Oct. 1.—Motion for change of venue filed.

1896, Oct. 13.—Min. 1709. Entry overruling motion for change of venue. Pl't'ff excepts.

This day this cause came on to be heard upon the motion of plaintiff to remove the said cause to an adjoining county for trial and the affidavit of the plaintiff and John W. Wolfe, Thomas L. Michie, Louis Stentz, William Schmidt, Jr., and Orlestuc Trisler, which was filed herein on October 1st, 1896, upon consideration whereof after argument of counsel the court finds said motion not well taken and overrules the same, to which ruling the plaintiff excepts.

1896, Nov. 27.—Motion for change of venue filed.

1896, Nov. 27.—Affidavits for change of venue filed.

1896, Dec. 26.—Min. 1796. Entry overruling motion for change of venue. Pl't'ff excepts.

This day this cause came on to be heard upon the motion of the plaintiff to remove the said cause to an adjoining county for trial and the affidavits of the plaintiff and Jno. W. Wolfe, Thos. L. Michie, Louis Stentz, Wm. Schmidt, Jr., and Orlestuc C. Trisler, which were filed herein, November 27th, 1896, upon consideration whereof after argument of counsel, the court — that the
41 affidavit of said plaintiff is not sustained by the affidavits of the other applicants above named as required by the statute, and said motion is not well taken, and overrules the said motion, to which the plaintiff now and here excepts.

1897, Jan. 28.—Min. 2026 Entry allowing bill of exceptions.

1897, Jan. 28.—Now comes the plaintiff and presents to the court his certain bill of exceptions herein, which being found by the court, to be true, is allowed, signed and sealed and a motion is hereby made a part of the record in this case.

1897, Jan. 28.—Min. 2026. Bill of exceptions filed by leave.

April 15.—Min. 1709 Jury impaneled and sworn cause progressed 1st day.

This day came the said parties herein by their attorneys, also came the following-named persons as jurors to wit:

1. Matthew Britton.	5. Milton Stewart.	9. Harry Wernke.
2. Ed. Patzelt.	6. Wm. Mansfield, Sr.	10. Jas. O'Larry.
3. H. W. Voss.	7. G. W. Arnold.	11. Emil Oberhen.
4. Chas. Stewart.	8. J. E. W. Ferree.	12. John G. F. Grote,

who were duly impaneled and sworn according to law and thereupon the case came on for hearing on the pleadings and evidence.

And the jury having heard the testimony adduced in part cause *cause* was continued until Friday, April 16th at 10 o'clock, a. m.

1897, April 16.—Min. 1710. Cause progressed 2nd day.

This day came the said parties again by their attorneys, also came the jury heretofore impaneled and sworn, and the trial proceeded. And the jury having heard additional testimony said cause was continued until Monday 19th 1897 at 10 o'clock a. m.

1897, Apr. 19.—Min. 1712. Cause progressed 3rd day.

This — again came the said parties by their attorneys, also came the jury heretofore impaneled and sworn and the trial proceeded. And the jury having heard the remaining testimony and argument, and the hour of adjournment having arrived said cause was continued until tomorrow morning at 10 o'clock.

1897, Apr. 20.—Min. 1713. Cause progressed and verdict for defendant.

This day again came the said parties by their attorneys, also
42 came the jury heretofore impaneled and sworn, and the trial proceeded. And the said jury having heard the charge of the court, retired to their room in charge of the co*u*t*r* constable for deliberation.

And now comes the said jury into open court with their verdict in writing, signed by their foreman and say:

We the jury on the issue joined, find for the defendant.

(Signed) MATTHEW BRITTON, *Foreman.*

1897, April 22.—Motion for a new trial filed.

1897, May 22.—Min. 1731. Entry overruling motion for a new trial and judgment on verdict for defendant, with costs. Pl'ff excepts.

This cause came on for hearing on the motion of the plaintiff to set aside the verdict and for a new trial herein the court on consideration thereof overrule the same. It is, therefore, considered by the court that the said defendant go hence without day and recover from the said plaintiff its costs herein expended, to all of which counsel for plaintiff excepts.

(See circuit ct. No. 2644.)

1899, May 17.—Mandate from supreme court filed.
1899, June 22.—Min. 1239. Mandate from supreme court entered.

STATE OF OHIO, }
City of Columbus. }

Supreme Court of Ohio.

To the honorable court of common pleas within and for the county of Hamilton, Ohio, Greeting:

We do hereby command you that you proceed, without delay to carry the within and foregoing judgment of our supreme court of Ohio in the cause of Charles B. Snell vs. The Cin'ti Street R'y Co. into execution, the petition in error herein and heretofore granted, to the contrary notwithstanding.

Witness, Josiah B. Allen, clerk of our said supreme court of Ohio at Columbus, this 6th day of May 1899.

JOSIAH B. ALLEN, *Clerk*,
[SEAL.] By JOHN P. DANA, *Deputy*.

Clerk's costs	$7.00	Paid by Thos. L. Michie.
Printing record	12.75	Paid by Thos. L. Michie.
Sheriff's costs	1.24	Due Chris. Reichel.

I, Geo. B. Harte, clerk of the circuit court of Hamilton
43 county, do hereby certify that the above is a correct copy of the entry made by said court in said cause as appears by the Journal of said court page 217.

Witness my hand and the seal of said court at Cincinnati this 19th day of May A. D. 1899.

GEORGE E. HARTE,
Clerk Circuit Court,
[SEAL.] By LOUIS BARDES, *Deputy*.

1899, Aug. 7.—Min. 1021. Mandate from supreme court entered.

THE STATE OF OHIO, } *ss:*
Hamilton County, }

Circuit Court of Hamilton County.

To the honorable the court of common pleas of Hamilton county, Ohio, Greeting:

Supreme Court of State of Ohio, January Term, A. D. 1899.

CHARLES B. SNELL }
vs.
THE CINCINNATI STREET RAILWAY CO. }

To the honorable judges of the circuit court of Hamilton county, Greeting:

Whereas a certain action was lately pending in the circuit court of Hamilton county wherein Charles B. Snell was plaintiff in error

and The Cin. Street Railway Co. was defendant in error and in which the judgment of said circuit court was in favor of said The Cincinnati Street Railway Co. and against the said Charles B. Snell, and which judgment was reversed on the petition in error of said Charles B. Snell in said supreme court of Ohio at the January term, A. D. 1899, and in which said The Cincinnati Street Railway Co. has obtained the allowance *of* Honorable John M. Harlan one of the justices of the Supreme Court of the United States of a writ of error and supersedeas which has been transmitted and received by said supreme court of Ohio. In pursuance of said allowance of said writ of error with supersedeas said The Cincinnati Street Railway Co. has given bond with surety for such supersedeas in the sum of five hundred dollars conditioned that the said The Cincinnati Railway Co. shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its said plea good in said
44 Supreme Court of the United States, then said obligation to be void else to remain in full force and virtue during the pendency of this proceeding in error in said Supreme Court of the United States which bond executed in *the* duplicate has been approved by said John M. Harlan, justice as aforesaid, and one of said bonds so executed and approved and a copy of said writ of error for said The Cincinnati Street Railway Co. has been filed and deposited in said supreme court of Ohio.

In witness whereof I, Josiah B. Allen, clerk of the supreme court of Ohio, hereunto set my hand and the seal of said court this 18th day of July, A. D. 1899.

JOSIAH B. ALLEN, *Clerk*,
By JOHN P. DANA, *Deputy*.

I, Geo. B. Harte, clerk of the circuit court of Hamilton county, do hereby certify that the above is a correct copy of the entry made by said court in the cause as appears by the journal of said court page 290.

Witness my hand and seal of said court at Cincinnati this 24th day of July, A. D. 1899.

GEORGE B. HARTE,
Clerk Circuit Court,
[SEAL.] By LOUIS BARDES, *Deputy*.

1901, March 13.—Certified copy of entry from supreme court filed.

1901, March 22.—Min. 1183. Certified copy of entry from circuit court, Writ of error dismissed for want of jurisdiction. Cause remanded.

THE STATE OF OHIO, }
Hamilton County. }

January Term, 1901.

To the honorable the court of common pleas of Hamilton county, Greeting:

Whereas, in a certain action which was lately heard in our said circuit court *wherein* The Cincinnati Street Railway Company *vs.* Charles B. Snell, the following entry was entered on the 15th day of March, 1901, viz:

STATE OF OHIO, }
City of Columbus. }

Supreme Court of the State of Ohio of the Term of January, A. D. 1901, to wit, Tuesday, February 26th.

45 THE CINCINNATI STREET RAILWAY Company *vs.* CHARLES B. SNELL. } Error to the Circuit Court of Hamilton County.

This day there was duly filed in this court a certain mandate from the Supreme court of the United States which is as follows, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Ohio, Greeting:

Whereas, lately in the supreme court of the State of Ohio, before you, or some one of you, in a cause between Charles B. Snell, plaintiff in error, and The Cincinnati Street Railway Company, defendant in error, wherein the judgment of the said supreme court entered in said cause on the 9th day of May, A. D., 1899, was in favor of the said plaintiff in error, Charles B. Snell and against the said defendant in error as by the inspection of the transcript of the record of the said supreme court which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress in such case made and provided fully and at large appears.

And whereas, in the present term of October in the year of our Lord one thousand nine hundred the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record and was argued by counsel.

On consideration whereof, it is now ordered and adjudged by this court that the writ of error in this cause be and the same is hereby dismissed for want of jurisdiction.

DECEMBER 17, 1900.

And the same is hereby remanded to you the said judges of the said supreme court of the State of Ohio, in order that such proceeding may be had in the said cause in conformity with the judgment

and decree of this court above stated as according to right
46 and justice and the Constitution and laws of the United States ought to be had therein the said writ of error notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States the 12th day of February in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

I, Josiah B. Allen, clerk of the supreme court of the State of Ohio, do hereby certify that the foregoing mandate is truly taken and correctly copied from the record of said court, to wit: Order Book No. 17, page 386.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said supreme court this 12th day of March, A. D. 1901.

JOSIAH B. ALLEN, *Clerk*,
[SEAL.] By JOHN P. DANA, *Deputy*.

I, Geo. B. Harte, clerk of the circuit court of Hamilton county, do hereby certify that the above is a true and correct copy of the entry made by said court in said cause as appears by the journal of said court, page 89.

Witness my hand and seal of said court at Cincinnati this 18th day of March, 1901.

GEO. B. HARTE,
Clerk Circuit Court,
[SEAL.] By G. W. LANFERSIEK, *Deputy*.

1901, May 11.—Min. 359. Entry changing venue.

CHARLES B. SNELL
vs.
THE CINCINNATI STREET RAILWAY COMPANY.

This cause came on this day to be heard again on the motion and the affidavit of plaintiff and the affidavits of Wm. Schmidt, Jr., Lewis Stentz, Orlestue C. Trisler, John W. Wolfe and Thomas L. Michie in support thereof, for a change of venue filed by the plaintiff herein on November 27, 1896, under section 5033 (now 5030) of the Revised Statutes of Ohio, said affidavits being set forth in the bill of exceptions allowed and filed
47 herein by this court on January 28th, 1897, and it appearing to the court from the mandate of the supreme court of Ohio filed herein May 17th, 1899, directing reversal of the judgment of this court on said motion, that the said cause shall be sent to an adjoining county for trial, and it appearing to the court that it is convenient for the parties to this cause, that it should be removed for trial to the court of common pleas of Clermont county, Ohio, said Clermont county being a county adjoining this county, it is,

therefore, ordered by the court that the place of trial of the above-entitled action be and the same hereby is changed to the county of Clermont, State of Ohio, and the court hereby orders and directs that the clerk of this court shall forthwith transmit to the clerk of the court of common pleas of the said Clermont county, the pleadings and papers in this case, with duly certified copy of this entry, to all of which the Cincinnati Street Railway Company by its counsel now and here excepts.

1901, June 6th.—Certified copy of entry changing venue, together with papers taken to Clermont county, Ohio, by T. L. Michie.

THE STATE OF OHIO, *Hamilton County,* } ss:

Common Pleas Court.

I, Chas. Weidner, Jr., clerk of the court of common pleas within and for the county and State aforesaid, do hereby certify the within and foregoing to be a true and correct transcript of the docket and journal entries in the case No. 94336, wherein Charles B. Snell is plaintiff and The Cincinnati Street Railway Co. is defendant, as appears from the files and records now in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court at Cincinnati this 8th day of August, A. D., 1901.

CHAS. WEIDNER, JR.,
Clerk of the Court of Common Pleas of Hamilton Co., O.,
[SEAL.] By CHAS. B. LUEDERS, *Deputy.*

48 (Endorsed:) No. 94336. Common pleas court. Charles B. Snell, plaintiff, *vs.* The Cinti. Street Railway Co., defendant. Transcript of docket and journal entries. Chas. Weidner, Jr., clerk.

49 *Transcript of Docket and Journal Entries to Circuit Court.*

THE STATE OF OHIO, *Clermont County,* } ss:

In the Court of Common Pleas.

CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, a Corporation under the Laws of Ohio, Defendant. } # 11601.

I, Horace A. Rice, clerk of the court of common pleas within and for the county of Clermont, do hereby certify that the following entries and judgments are truly copied from the dockets and journals of said court, to wit:

Docket Entries, to wit :

1901, June 7.	Certified copy of entry		1
" " "	Original petition filed		2
" " "	Summons filed		3
" " "	Original answer filed		4
" " " "	answer filed		5
" " " "	motion filed	6 to	8
" " " "	petition in error filed		9
" " " "	subpœnas filed	10 to	25
" " " "	entries & certified copies filed	26 to	33
" " " "	verdict filed	34 to	35
" " " "	summons in error filed		36
" " " "	mandate filed	37 to	41
" " " "	application sten. filed		42
" " " "	venire struck jury filed		43
" " " "	certificate struck jury filed		44
" " " "	affidavits filed		45
" " 26.	Motion filed		46
" " 29.	Bill of exceptions filed		47
" July 1.	Motion for new trial filed		48

Journal Entries, to wit:

Entry of June 29th, 1901.

CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, Defendant. } #11601.

This day this cause came on to be heard upon the motion of the defendant filed herein on the 26th day of June, A. D., 1901, to remand this cause to the court of common pleas of Hamilton county, Ohio, for trial, for the reasons set out in said motion, and
50 thereupon the defendant in support of said motion offered in evidence the affidavits of the plaintiff, Charles B. Snell, and of John W. Wolfe, Thomas L. Michie, Lewis Stentz, William Schmidt, Jr., and Orlestus C. Trisler, filed originally in the court of common pleas of Hamilton county, Ohio, in this case on the first day of October, 1896, and said affidavits being all the evidence offered by either plaintiff or defendant in this case and all the evidence offered on the hearing of said motion to remand this case, and said motion was argued by counsel and submitted to the court and the court on consideration thereof, find said motion to be not well taken and that under section 5030 of Revised Statutes of Ohio (originally sec. 5033) this case is now properly in this court and that this court has jurisdiction to hear and determine the action and said motion to remand this cause to the court of common pleas of Hamilton county, Ohio, is now overruled.

To which ruling and judgment of the court in overruling said motion to remand this cause the defendant then and there excepted

and thereupon came the defendant, The Cincinnati Street Railway Company and presented to the court its bill of exceptions taken upon said motion to remand this cause, and the court having seen and examined said bill of exceptions and finding the same to be correct and a true bill of exceptions, orders that the same be allowed, signed, filed and made a part of the record in this case, but not spread upon the journal.

Entry of July 1st, 1901.

CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY COMPANY, Defendant. } No. 11601.

This day came the parties herein by their attorneys. Also came the following-named persons as jurors to wit:

1. A. T. Cowen	2. J. W. Bagby.	3. Dale K. Parrott.
4. Hanson Holter.	5. Fred. Griffith.	6. C. J. H. Fishback.
7. D. G. Dustin.	8. J. I. Beck.	9. D. L. Mahan.
10. Louis Burtde.	11. Stephen Cramer.	12. S. S. Bagby,

who were duly impaneled and sworn by the clerk and accepted in this case.

51 Thereupon this cause coming on to be heard upon the pleadings and the evidence, after the jury having heard the evidence, adduced in full, the argument of counsel, and charge of the court, said jury retired to the jury-room for deliberation.

Afterwards, said jury returned in open court and delivered their verdict in writing and signed by their foreman and say:

Verdict for Plaintiff.

THE STATE OF OHIO, } ss:
Clermont County, }

Court of Common Pleas, April Term, July 1st, 1901.

CHARLES B. SNELL, Plaintiff,
vs.
THE CINCINNATI STREET RAILWAY Company, Defendant. } 11601. Civil Action. Verdict for Plaintiff.

We, the jury, being duly impaneled, sworn and affirmed, find the issue in this case in favor of the plaintiff and assess the amount due to the plaintiff from the defendant, at the sum of five hundred dollars ($500.00).

STEPHEN CRAMER, *Foreman.*

Dated July 1, 1901.

It is, therefore, ordered, adjudged and decreed that the plaintiff Charles B. Snell, recover from the defendant said sum of five hun-

dred ($500.00) dollars, with his costs herein expended, taxed at $——.

To all of which order and judgment defendant by counsel excepts.

Entry of July 2, 1901.

CHARLES B. SNELL, Plaintiff,
vs. } 11601.
THE CINCINNATI STREET RAILWAY COMPANY, Defendant.

This day this cause came on to be heard upon the motion of defendant for a new trial filed herein, on the first day of July, A. D., 1901, and was argued by counsel and submitted to the court, and the court being now fully advised in the premises, finds said
52 motion for a new trial to be not well taken and overrules the same.

To which ruling and judgment of the court defendant by its counsel excepts.

STATE OF OHIO, } *ss:*
Clermont County,

I, H. A. Rice, clerk of the court of common pleas in and for said county, do hereby certify that the foregoing is a true transcript of the docket and journal entries of said court in the above-entitled cause; and I further certify that the papers herewith sent, numbered from one to up 48 are the original papers and pleadings filed in the above cause of Charles B. Snell, plaintiff, against The Cincinnati St. R'y Co., defendant.

In testimony whereof, I hereunto set my hand and affix seal of said court of common pleas, on this 12th day of August, A. D. 1901.

[SEAL.] H. A. RICE, *Clerk*,
By J. L. LARKIN,
Deputy Clerk.

(Endorsed:) No. 11601. Doc. 1898, page 11601. Common pleas court, Clermont county, O. Charles B. Snell, plaintiff, *vs.* The Cinti. St. R'y Co., defendant. Transcript of docket and journal entries. Filed in circuit court, Aug. 14, 1901. —— ——, clerk, by J. L. Larkin, deputy. Filed Feb. 7, 1902, in supreme court of Ohio. L. E. Emerson, clerk. 7876.

53 Clermont County Circuit Court.

THE CINCINNATI STREET RAILWAY COMPANY, a Corporation under the Laws of Ohio, Plaintiff in Error,
vs.
CHARLES B. SNELL, Defendant in Error. } No. —. Petition in Error.

The plaintiff in error, The Cincinnati Street Railway Company, says that on or about the 15th day of October, 1892, an action was

commenced in the court of common pleas of Hamilton county, Ohio, numbered 94336, on the docket of said court, wherein Charles B. Snell was plaintiff and The Cincinnati Street Railway Company, a corporation under the laws of Ohio, was defendant. And that afterwards, to wit, on May 11th, 1901, an order was made by said court of common pleas of Hamilton county, Ohio, on motion and affidavits theretofore filed by the said Charles B. Snell, directing that the place of trial of said action be changed to the county of Clermont, State of Ohio, and directing the clerk of the court of common pleas of Hamilton county, Ohio, to forthwith transmit to the clerk of the court of common pleas of Clermont county, Ohio, the pleadings and papers in said cause, with a duly certified copy of the entry making such order, to all which the said Cincinnati Street Railway Company then and there excepted.

Plaintiff in error, The Cincinnati Street Railway Company, says that the April term, A. D. 1901, of the court of common pleas of Clermont county, Ohio, to wit, on the 1st day of July, A. D. 1901, the said Charles B. Snell recovered a judgment by the consideration of said court against the plaintiff in error herein, in said action, in which the change of venue was ordered made as aforesaid, a transcript of the docket and journal entries whereof, both in said court of common pleas of Hamilton county, Ohio, and said court of common pleas of Clermont county, Ohio, together with the original papers, pleadings and files therein, is filed herewith.

Plaintiff in error says that there is error in said record and proceedings in, said court of common pleas of Hamilton county, Ohio,
and in the court of common pleas of Clermont county, Ohio,
54 in this, to wit:

First. Said court of common pleas of Hamilton county, Ohio, erred in its order requiring a change of venue to be made from said court to the court of common pleas of Clermont county, Ohio, to which ruling and judgment in ordering a change of venue this plaintiff at the time excepted.

Second. Said court of common pleas of Clermont county, Ohio, erred in overruling the motion filed by this plaintiff in error to remand this cause to the court of common pleas of Hamilton county, Ohio, for trial, to which ruling of the court this plaintiff in error excepted at the time it was made.

Third. The court of common pleas of Clermont county, Ohio, erred in overruling the motion of plaintiff in error herein for a new trial, to which ruling and judgment of said court plaintiff in error excepted at the time it was made.

Fourth. The court of common pleas of Clermont county, Ohio, erred in holding that it had jurisdiction of, and in exercising jurisdiction in impanelling a jury and trying the case. To which ruling and judgment of the court and in exercising said jurisdiction plaintiff in error excepted at the time.

Fifth. The verdict of the jury in this case, upon which the judgment was rendered, was contrary to law.

Sixth. The judgment in this case was given for Charles B. Snell,

when under the law it ought to have been for the plaintiff in error herein.

Seventh. Other and additional errors of law apparent upon the record of this case.

Plaintiff in error therefore prays that said judgment may be reversed and that plaintiff in error may be restored to all things it has lost by reason thereof.

PAXTON & WARRINGTON,
FRAZIER & HICKS,
DAVIS & WOODLIEF,
Attorneys for Plaintiff in Error

(Endorsed:) Clermont county, Ohio, circuit court. The Cincinnati Street Railway Company, plaintiff in error, *vs.* Charles B. Snell, defendant in error. Petition in error. Filed C. C., Aug. 14, 1901, J. L. Larkin, deputy clerk. Filed Feb. 7, 1902, in supreme court of Ohio. 7876. L. E. Emerson, clerk.

55 Clermont County Circuit Court.

The Cincinnati Street Railway Company, a Corporation under the Laws of Ohio, Plaintiff in Error, *vs.* Charles B. Snell, Defendant in Error.	No. —. Waiver of Service of Summons in Error.

The issue of summons in error and service thereof in the above-entitled cause are hereby waived and appearance of the defendant in error is hereby entered by his counsel of record.

JOHN W. WOLFE,
THOS. L. MICHIE,
Attorneys for Defendant in Error.

Cincinnati, Ohio, August 9th, 1901.

(Endorsed:) No. —. Clermont county circuit court. The Cincinnati Street Railway Company, a corporation, etc., plaintiff in error, *vs.* Charles B. Snell, defendant in error. Waiver of service of summons in error. Filed Aug. 14, 1901, J. L. Larkin, deputy clerk. Filed Feb. 7, 1902, in supreme court of Ohio. 7876. L. E. Emerson, clerk.

56 Circuit Court of Clermont County, Ohio.

The Cincinnati Street Railway Company, Plaintiff in Error, *vs.* Charles B. Snell, Defendant in Error.	No. 177. $\frac{N-1}{319}$

Entry of Affirmance.

This cause came on to be heard upon the petition in error, the pleadings, the bills of exceptions taken in the common pleas court

of Hamilton county, Ohio, and in the common pleas court of Clermont county, Ohio, the entry in the common pleas court of Hamilton county, Ohio, granting change of venue, the entry in the common pleas court of Clermont county, Ohio, overruling the motion to remand said cause, the judgment and the entire record in said cause; and the same having been argued by counsel, the court on consideration thereof find that the common pleas court of Clermont county, Ohio, had jurisdiction to try said cause and render the judgment therein; that the statute of Ohio providing for the change of venue and removal of said cause (Revised Statutes section 5030, formerly sec. 5033) is not in conflict with the constitution of the State of Ohio and is not in conflict with the Constitution of the United States and particularly with article XIV in amendment of said Constitution of the United States; and that there is no error in the proceedings in the court of common pleas of Hamilton county, Ohio, or in the court of common pleas of Clermont county, Ohio; and said judgment is therefore affirmed and this cause remanded to said court of common pleas of Clermont county for further proceedings and for execution. To all of which said plaintiff in error, The Cincinnati Street Railway Company, excepts.

(Endorsed:) No. —. Circuit court of Clermont county, Ohio. The Cincinnati Street Railway Company, pl'ff in error, *vs.* Charles B. Snell, def't in error. Entry of affirmance. "O. K." John W. Wolfe, Thos. L. Michie, att'ys for C. B. Snell. Enter; Swing, J. Filed Feb. 7, 1902, In Supreme court of Ohio. 7876. L. E. Emerson, clerk.

57 *Transcript of Docket and Journal Entries to Supreme Court.*

THE STATE OF OHIO, } *ss:*
Clermont County, }

In the Circuit Court.

THE CINCINNATI STREET RAILWAY COMPANY, Plaintiff in Error, }
vs.
CHARLES B. SNELL, Defendant in Error. }

I, H. A. Rice, clerk of the circuit court within and for the county of Clermont, do hereby certify that the following entries and judgments are truly copied from the dockets and journals of said court, to wit:

Docket Entries.

1901, Aug. 14. Petition in error filed.
" " " Waiver of service filed.
" " " Transcript filed.
" " " Original papers 1 to 49 filed.
" " " Bill of exceptions.

Journal Entry of January 17, 1902.

THE CINCINNATI STREET RAILWAY CO., Plaintiff in Error,
vs.
CHARLES B. SNELL, Defendant in Error. } 177.

This cause came on to be heard upon the petition in error, the pleadings, the bill of exceptions taken in the common pleas court of Hamilton county, Ohio, and in the common pleas court of Clermont county, Ohio, the entry in the common pleas court of Hamilton county, Ohio, granting change of venue, the entry in the common pleas court of Clermont county, Ohio, overruling the motion to remand said cause, the judgment and the entire record in said cause, and the same having been argued by counsel, the court, on consideration thereof, find that the common pleas court of Clermont county, Ohio, had jurisdiction to try said cause and render the judgment therein; that the statute of Ohio providing for the change of venue and removal of said cause (Revised Statutes, section 5030, 58 formerly sec. 5033) is not in conflict with the constitution of the State of Ohio and is not in conflict with the Constitution of the United States and particularly with article XIV in amendment of said Constitution of the United States and that there is no error in the proceedings in the court of common pleas of Hamilton county, Ohio, or in the court of common pleas of Clermont county, Ohio, and said judgment is therefore affirmed and this cause remanded to said court of common pleas of Clermont county for further proceedings and for execution. To all of which said plaintiff in error, The Cincinnati Street Railway Company, excepts.

This January 17th, 1902.

STATE OF OHIO, *Clermont County,* } *ss:*

I, H. A. Rice, clerk of the circuit court in and for said county, do hereby certify that the foregoing is a true transcript of the docket and journal entries of said court in the above-entitled cause; and I further certify that the papers herewith sent, numbered from one up to 53, are the original papers and pleadings filed in the above cause of The Cincinnati Street Railway Company, plaintiff in error, against Charles B. Snell, defendant in error.

In testimony whereof, I hereunto set my hand and affix seal of said circuit court on this seventeenth day of January, A. D. 1902.

H. A. RICE, *Clerk,*
By J. L. LARKIN,
[SEAL.] *Dep. Clerk.*

(Endorsed:) No. 177. Clermont county. The Cincinnati St. R'y Co. *vs* Charles B. Snell. Transcript of docket and journal entries. Filed in supreme court. Filed Feb. 7, 1902, In supreme court of Ohio. L. E. Emerson, clerk. 7876.

59 Supreme Court of Ohio.

THE CINCINNATI STREET RAILWAY COMPANY, Plaintiff in Error,
vs.
CHARLES B. SNELL, Defendant in Error. } No. 7876.

Petition in Error.

The Cincinnati Street Railway Company, plaintiff in error, complains of Charles B. Snell defendant in error, for that at the January term, A. D., 1902 the said defendant in error recovered a judgment against this plaintiff in error, in a certain cause pending in the circuit court of Clermont county, Ohio, wherein The Cincinnati Street Railway Company was plaintiff in error, and said Charles B. Snell was defendant in error, wherein said court affirmed the judgment of the common pleas court of Clermont county, Ohio, in a certain cause therein pending, wherein the said Charles B. Snell was plaintiff, and this plaintiff in error, The Cincinnati Street Railway Company, was defendant.

Plaintiff in error files herewith a transcript of the docket and journal entries in said cause, and the original papers and record in said cause.

Plaintiff in error avers that said action was originally commenced by the defendant in error in the court of common pleas of Hamilton county, Ohio, and by said court of common pleas the said cause was removed for trial to the common pleas court of Clermont county, Ohio, under and in pursuance of section 5033 now 5030 of the Revised Statutes of Ohio, by an entry in said common pleas court of Hamilton county, granting a change of venue, filed June 7, 1901, which said section of the Revised Statutes of Ohio the plaintiff in error avers is in contravention of the Constitution of the United States, and particularly of article XIV in amendment thereof, and of the constitution of the State of Ohio.

And the said common pleas court of Clermont county erred in overruling the motion of this plaintiff in error to remand said cause to the court of common pleas of Hamilton county, Ohio.

60 And the said court of common pleas of Clermont county, Ohio, erred in proceeding to try and render a judgment therein against this plaintiff in error.

And the plaintiff in error avers that there is error in said record and said judgment of the circuit court of Clermont county, Ohio, in this, to wit:

First. That said circuit court of Clermont county, Ohio, committed error in affirming the said judgment of the court of common pleas of Clermont county, Ohio, in said cause.

Second. The circuit court of Clermont county erred in rendering judgment in favor of the defendant in error and against the plaintiff in error.

Third. The judgment of the circuit court of Clermont county should have been in favor of the plaintiff in error.

Fourth. The circuit court of Clermont county erred in rendering judgment in favor of the defendant in error, when, according to the law of the land, judgment should have been rendered in favor of the plaintiff in error.

Wherefore, plaintiff in error prays that said judgment of the circuit court may be reversed, and that it may be restored to all rights which it has lost by reason thereof.

E. W. KITTREDGE,
J. W. WARRINGTON,
Attorneys for Plaintiff in Error.

Waiver.

Issuance and service of summons in error is hereby waived, and the appearance of Charles B. Snell, defendant in error, is hereby entered in the supreme court of Ohio.

JOHN W. WOLFE,
THOS. L. MICHIE,
Attorneys for Defendant in Error.

Cincinnati, Ohio, February 6th, 1902.

(Endorsed:) No. 7876. Supreme court of Ohio. The Cincinnati Street Railway Company, plaintiff in error, *vs.* Charles B. Snell, defendant in error. Petition in error. Filed Feb. 7, 1902, in supreme court of Ohio. L. E. Emerson, clerk.

61 Supreme Court of Ohio.

THE CINCINNATI STREET RAILWAY COMPANY, Plaintiff in Error,
vs.
CHARLES B. SNELL, Defendant in Error. } No. 7876.

Stipulation.

It is hereby stipulated and agreed by the parties hereto, through their respective counsel, subject to the approval of the court, that the printing of the record and the preparation and printing of briefs shall be waived and the cause submitted without argument for immediate determination.

JOHN W. WOLFE AND
THOS. L. MICHIE,
Att'ys for Defendant in Error.
E. W. KITTREDGE,
J. W. WARRINGTON,
For Pl'ff in Error.

(Endorsed:) No. 7876. Supreme court of Ohio. The Cincinnati Street Railway Co., plaintiff in error, *vs.* Charles B. Snell, defendant in error. Stipulation. Filed Mar. 24, 1902, in supreme court of Ohio. L. E. Emerson, clerk.

62 In the Supreme Court of Ohio, January Term, A. D. 1902.

THE STATE OF OHIO, } ss:
City of Columbus, }

Certified Transcript of Docket and Journal Entries.

In the record and proceedings then and there had and held, among other things, is the following, to wit:

THE CINCINNATI STREET R'Y CO., Plaintiff in Error,
vs.
CHARLES B. SNELL, Defendant in Error.
} Error to the Circuit Court of Clermont County.

Feb'y 7, 1902. Petition in error & waiver of summons filed.
" " " Circuit court transcript filed.
" " " Original papers & bill of exceptions filed.
" " " Motion by plaintiff to dispense with printing record & notice filed.
M'ch 24, " Stipulation of parties waiving record & briefs printed & for immediate submission filed.
Apr. 29, " Journal entry: This cause came on to be heard upon the transcript of the record of the circuit court of Clermont county, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court that the judgment of the said circuit court be, and the same is hereby affirmed; and, it appearing to the court that there were reasonable grounds for this proceeding in error, it is ordered that no penalty be assessed herein. It is further ordered that the defendant in error recover from the plaintiff in error his costs herein expended, taxed at $——.

Ordered, that a special mandate be sent the court of common pleas of Clermont county, to carry this judgment into execution.

Ordered, that a copy of this entry be certified to the clerk of the circuit court of Clermont county, "for entry." Order Book No. 18, page 260.

Apr. 29, " Journal entry: On motion of said plaintiff in error, The Cincinnati Street Railway Company, this court orders it to be certified and made part of the record in this case and of the judgment and entry of affirmance heretofore rendered and made herein, that in the rendition of said judgment of affirmance it became and was material to the case to determine whether a certain act of the General Assembly of the State of Ohio, known as and numbered section 5030 (formerly section 5033) of the Revised Statutes of the State of Ohio, was of binding force and validity against the said The Cin-

cinnati Street Railway Company, a corporation created by and existing under the laws of the State of Ohio.

63 And the court order it to be further certified that said plaintiff in error claimed and asked this court to hold, that said act, to wit, section 5030 (formerly section 5033) of said Revised Statutes, is repugnant to the Constitution of the United States and in particular to section 1 of article XIV in amendment thereof.

And the court order it to be further certified that the decision of the court was and is in favor of the validity of such statute.

It is hereby further certified that this court is the highest court of law and equity in the State of Ohio in which a decision of this case can be had. Order Book No. 18, page 260.

May 6, 1902. Mandate issued.
" " " Entry of certification sent clerk.
" 13, " Papers sent to Jno. W. Warrington, Cincinnati, O.
" 26, " Papers returned by Kittredge & Wilby, Cincinnati, O.

STATE OF OHIO, }
City of Columbus. }

Supreme Court of Ohio.

I, Lawson E. Emerson, clerk of the supreme court of Ohio, do hereby certify that the foregoing is a true and correct copy of all the pleadings on file in this court in the case of The Cincinnati Street Railway Company, plaintiff in error, against Charles B. Snell, defendant in error, and also that the foregoing transcript of docket and journal entries is truly taken and correctly copied from the records of said court, to wit: from Minute Book No. 22, page 128, and Order Book No. 18, page 260.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said supreme court this 23rd day of June, A. D., 1902.

[Seal of the Supreme Court of the State of Ohio.]

LAWSON E. EMERSON, *Clerk*,
By J. G. OBERMEYRE, *Deputy*.

64 [Endorsed:] No. 7876. Supreme court of Ohio. The Cincinnati Street Railway Company, plaintiff in error, *vs.* Charles B. Snell, defendant in error. Certified transcript of record.

65 In the Supreme Court of the United States.

In error to the supreme court of Ohio.

THE CINCINNATI STREET RAILWAY COMPANY, Plaintiff in Error,
vs.
CHARLES B. SNELL, Defendant in Error. } No. —.

To the Honorable Rufus W. Peckham, justice of the Supreme Court of the United States:

Your petitioner, The Cincinnati Street Railway Company, a corporation organized under the laws of Ohio, and doing business in the city of Cincinnati, in said State, to your honor respectfully represents and sets forth that at the October term, A. D. 1896, of the court of common pleas of the county of Hamilton, in said State, in a case wherein one Charles B. Snell was plaintiff, and your petitioner, The Cincinnati Street Railway Company, was defendant, a judgment and order were rendered and made by said common pleas court in favor of your petitioner and against said Snell in the overruling of a certain motion and application made and filed by said Snell for a change of venue from said county wherein said cause was brought and was pending to another county of said State; that afterwards, on application of said Snell, and without objection on his part, said cause was heard and decided finally upon its merits in said court of common pleas, and the verdict of the jury and the judgment thereon of said court were rendered in favor of your petitioner, the said judgment having been rendered on May 22, 1897; that afterwards said Snell caused a petition in error to be presented
66 to the circuit court for the first judicial district of said State in said county of Hamilton to reverse said final judgment solely on account of the error alleged to have been committed in overruling said application and motion for change of venue, but the same was at the January term, A. D. 1898, affirmed by said circuit court; that afterwards said Snell caused a petition in error to be presented to the supreme court of Ohio to reverse said judgment of affirmance, as well as the judgment and order of the said court of common pleas overruling said application and motion for change of venue, but on account only of the overruling of said application and motion, as aforesaid, and that the same were, at the January term, A. D. 1899, to wit, on May 9th, reversed by said supreme court solely on the ground aforesaid, and a mandate was ordered to be issued commanding the said inferior courts to grant said motion and application for change of venue.

Your petitioner further represents and states that said application and motion were made under and in pursuance of section 5030 (formerly 5033) of the Revised Statutes of Ohio, which is in words and figures as follows:

"SEC. 5030. When a corporation having more than fifty stockholders is a party in an action pending in a county in which the corporation keeps its principal office, or transacts its principal busi-

ness, if the opposite party make affidavit that he cannot, as he believes, have a fair and impartial trial in that county, and his application is sustained by the several affidavits of five credible persons residing in such county, the court shall change the venue to the adjoining county most convenient for both parties."

It was specially set up and claimed by your petitioner that said statute was in conflict with the Constitution of the United States, and particularly with section 1 of article XIV in amendment thereof, and the said supreme court of Ohio (being the highest court of law or equity in said State in which a decision can be had
67 in said cause) decided in favor of the validity of said statute, and the judgment was and is in its practical operation and effect a denial to your petitioner of the equal protection of the laws of said State of Ohio, all of which appears plainly upon the face of the record of said cause, a certified transcript of which is presented herewith.

Thereupon your petitioner, The Cincinnati Street Railway Company, applied to this court for a writ of error in this behalf, to the end that it might be determined by the judgment of the Supreme Court of the United States whether said statute is not in conflict with the provisions of the Constitution of the United States; that said writ of error was allowed, and said cause was heard in this court upon the assignment of errors made by your petitioner; and, at the October term, 1900, upon consideration thereof, it was ordered and adjudged by this court that the writ of error in said cause should be, and the same was, dismissed solely for the want of jurisdiction, in that the judgment of the supreme court of Ohio to reverse which said writ of error was sued out, was not a final judgment in said cause. And said cause was thereupon remanded to the supreme court of Ohio, for the reasons stated.

And, in pursuance of the judgment and mandate of the supreme court of Ohio in said cause, the same was remanded to the common pleas court of Hamilton county, Ohio, with instructions to that court to grant said motion and application for a change of venue.

And thereupon the court of common pleas of Hamilton county, Ohio, upon the motion of said Charles B. Snell, did, at the April term, 1901, of said court, grant such change of venue under said section 5030 (formerly 5033) of the Revised Statutes of Ohio;
68 and removed said cause for trial to the court of common pleas of Clermont county, Ohio.

To all of which said plaintiff in error excepted, and claimed that said statute was in conflict with the Constitution of the United States, and particularly of section 1, of article XIV in amendment thereof. And thereafter, said cause having been removed to the court of common pleas of Clermont county, in the State of Ohio, the plaintiff, The Cincinnati Street Railway Company moved said court for an order remanding said cause to the court of common pleas of Hamilton county, Ohio, for trial, and claimed that said sec. 5030 (formerly 5033) Rev. Stats., under the provisions of which said cause was ordered removed to said common pleas court of Clermont county,

Ohio, was in conflict with the Constitution of the United States, as aforesaid.

That at the April term of said court, to wit, on July 1st, 1901, a verdict of $500 was rendered against this petitioner, and after overruling the motion for a new trial, judgment on said verdict was rendered July 2nd, 1901, against this petitioner.

To all of which your petitioner excepted.

And thereafter your petitioner caused its petition in error to be presented to the circuit court for the first judicial district of said State, in said county of Clermont, to reverse said final judgment, on account of the error alleged to have been committed by the common pleas court of Hamilton county, Ohio, in granting said application and motion for a change of venue, and for the error committed by said common pleas court of Clermont county, Ohio, in overruling said motion to remand said cause to the court of common pleas of Hamilton county, for the same reason. And the said circuit court affirmed said judgments both of said common pleas court of Clermont county and of said common pleas court of Hamilton county.

69 That thereafter the petitioner caused a petition in error to be presented to the supreme court of Ohio, to reverse the said judgment of affirmance by the circuit court of said district, as well as the judgment of said common pleas court of Hamilton county in granting said application and motion for a change of venue, and of said court of common pleas of Clermont county in refusing to remand said cause, for the same reason.

And your petitioner further represents that the supreme court of Ohio, at the January term, 1902, to wit, on the 29th day of April, 1902, adjudged that the judgment of the said circuit court be, and the same was, thereby affirmed.

And your petitioner further represents that it was specially set up and claimed by your petitioner that said statute, sec. 5030 (formerly 5033) Rev. Stats. of Ohio, was in conflict with the Constitution of the United States, and particularly with section 1 of article XIV in amendment thereof; and the said supreme court of Ohio did, in rendering said judgment of affirmance as aforesaid, order it to be certified, and made a part of the record in the cause and of the judgment and entry of affirmance rendered therein, that in the rendition of said judgment of affirmance it became and was material to the cause to determine whether said act of the General Assembly of the State of Ohio, known as sec. 5030 (formerly sec. 5033) of the Revised Statutes was of binding force and validity against said The Cincinnati Street Railway Company; and that this petitioner claimed and asked the court to hold that said act is repugnant to the Constitution of the United States, and particularly to sec. 1 of article XIV in amendment thereof; and that the decision of the supreme

70 court of Ohio was and is in favor of the validity of said statute.

Your petitioner avers that the said judgment is in its practical operation and effect a denial to your petitioner of the equal protection of the laws of the said State of Ohio; all of which appears

plainly upon the face of the record of said cause, a certified transcript of which is presented herewith.

Thereupon your petitioner asks leave to have its writ of error in this behalf, to the end that it may be determined by the judgment of the Supreme Court of the United States whether this statute is in conflict with the provisions of the Constitution of the United States; and it prays further for a supersedeas, and that the amount of the bond therefor may be fixed by your honor.

E. W. KITTREDGE,
JOHN W. WARRINGTON,
Attorneys for the Cincinnati Street Railway Company.

71 [Endorsed:] No. —. In the Supreme Court of the United States. In error to the supreme court of Ohio. The Cincinnati Street R'y Company, plaintiff in error *vs.* Charles B. Snell, defendant in error. Petition in error E. W. Kittredge John W. Warrington att'ys for pl'ff in error.

72 In the Supreme Court of the United States, —— Term, 1902.

The Cincinnati Street Railway Company, Plaintiff in Error, *vs.* Charles B. Snell, Defendant in Error.	In Error to the Supreme Court of Ohio.

Assignment of Errors.

On the — day of —— 1902 of the same term, before the justices of the Supreme Court, at the Capitol, in the city of Washington, came the said The Cincinnati Street Railway Company, by Edmund W. Kittredge and John W. Warrington, its attorneys, and said that in the record and proceedings aforesaid there is manifest error in this, to wit:

First. That the supreme court of the State of Ohio erred in holding that section 5030 (formerly 5033) of the Revised Statutes of Ohio, involved in said cause, is not in conflict with the Constitution of the United States, and particularly with article XIV in amendment thereof.

Second. That said court erred in affirming the judgment of the circuit court of the first judicial district of the State of Ohio and the common pleas court of Clermont county, Ohio, when by the law of the land said judgments ought to have been reversed.

Third. That said court erred in entering judgment in favor of said Charles B. Snell and against the said The Cincinnati Street Railway Company.

And said The Cincinnati Street Railway Company prays that the judgment of the supreme court aforesaid may be reversed,
73 annulled and altogether held for naught, and that said company may be restored to all things which it has lost by reason of said judgment.

EDMUND W. KITTREDGE,
JOHN W. WARRINGTON,
Attorneys for Plaintiff in Error.

[Endorsed:] Filed Jun- 27, 1902. In supreme court of Ohio L. E. Emerson, clerk.

74 [Endorsed:] In the Supreme Court of the United States The Cincinnati Street Railway Company plaintiff in error *vs.* Charles B. Snell defendant in error Assignment of errors Edmund W. Kittredge John W. Warrington att'ys for pl'ff in error

75 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the supreme court of the State of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Cincinnati Street Railway Company, plaintiff in error, and Charles B. Snell, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the

76 same, to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 1st day of August, in the year of our Lord one thousand nine hundred and two.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
R. W. PECKHAM,
Jus. Sup. Ct. U. S.
Aug. 1, 1902.

77 [Endorsed:] (Original.) In the Supreme Court of the United States, The Cincinnati Street Railway Company, plaintiff in error *vs.* Charles B. Snell, defendant in error. Writ of error.

78 UNITED STATES OF AMERICA, *ss:*

To Charles B. Snell, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Ohio wherein The Cincinnati Street Railway Company, a corporation under the laws of the State of Ohio, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this first day of August in the year of our Lord one thousand nine hundred and two.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

79 [Endorsed:] (Original) In the Supreme Court of the United States The Cincinnati Street Railway Company plaintiff in error *vs.* Charles B. Snell defendant in error Citation.

80 (Copy.)

UNITED STATES OF AMERICA, *ss:*

To Charles B Snell, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Ohio, wherein The Cincinnati Street Railway Company a corporation under the laws of the State of Ohio is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this first day of August, in the year of our Lord one thousand nine hundred and two.

(Signed) R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

81 [Endorsed:] Marshal's civil docket No. 2109. Copy of citation for def't in error. 1453 Gladstone —.

On this 18th day of August, in the year of our Lord one thousand nine hundred and two, personally appeared W. J. Sanderson before me, the subscriber, and makes oath that he delivered a true copy of the within citation to the within-named Charles B. Snell, personally.

W. J. SANDERSON,
Deputy U. S. Marshal, S. D. O.

Sworn to and subscribed the 18 day of August, A. D. 1902.

[Seal United States District Court, Southern Dis. Ohio.]

ROB'T C. GEORGI,
Deputy Clerk U. S. District Court, S. D. O.

Fees.

Service	$2.00
Mileage	.12
Fees paid by John W. Warrington, att'y	$2.12

82 In the Supreme Court of the United States.

THE CINCINNATI STREET RAILWAY COMPANY, Plaintiff in Error,
vs.
CHARLES B. SNELL, Defendant in Error. } No. —.

In error to the supreme court of Ohio.

Know all men by these presents:

That we, The Cincinnati Street Railway Company as principal, and John Kilgour and James A. Collins as sureties, are held and firmly bound unto Charles B. Snell, in the full and just sum of one thousand dollars ($1000), to be paid to the said Charles B. Snell, his certain attorneys, executors, administrators or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-sixth day of June, A. D. 1902.

Whereas, in the supreme court of Ohio, in a suit depending in said court between The Cincinnati Street Railway Company, plaintiff in error, and Charles B. Snell, defendant in error, a judgment was rendered against said The Cincinnati Street Railway Company; and said The Cincinnati Street Railway Company having obtained a writ of error, and filed a copy thereof in the office of the clerk of said court to reverse the judgment in the aforesaid suit, and a citation directed to said Charles B. Snell, citing and admonishing him to be and appear at the session of the United States Supreme Court, to be holden at the city of Washington, within — days from the date thereof.

Now, the above obligation is such that if said The Cincinnati Street Railway Company shall prosecute said writ of error to effect and answer all damages and costs if it fail to make the said plea good, then the above obligation to be void; else to remain in full force and virtue.

[Seal of the Cincinnati Street Railway Co.]

THE CINCINNATI STREET RAILWAY COMPANY,
By JOHN KILGOUR, *President.* [SEAL.]
JOHN KILGOUR. [SEAL.]
JAS. A. COLLINS. [SEAL.]

Signed, sealed and delivered in presence of us:
ELIZABETH S. KING.
JOHN J. TAYLOR, JR.

83 [Endorsed:] In the Supreme Court of the United States. The Cincinnati Street Railway Company, plaintiff in error, *vs.* Charles B. Snell, def't in error. Supersedeas bond. Within undertaking is offered and accepted June 27, 1902, Jacob H. Burket, acting chief justice. Approved Aug. 1, 1902. R. W. Peckham, jus. Sup. Ct. U. S.

84 Supreme Court of the State of Ohio.

STATE OF OHIO, }
City of Columbus. }

I, Lawson E. Emerson, clerk of the supreme court of Ohio, do hereby certify that the foregoing transcript of record is a true and correct copy of all the original pleadings on file in this court in the case of The Cincinnati Street Railway Company, plaintiff in error, against Charles B. Snell, defendant in error, and that the foregoing petition for writ of error, assignment of errors, writ of error, citation with copy and return thereon, and bond, are the original papers filed herein in said cause, and that the foregoing transcript of docket and journal entries are truly taken and correctly copied from the records of said court.

Seal the Supreme Court of the State of Ohio.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said supreme court this 19th day of August, A. D., 1902.

LAWSON E. EMERSON,
Clerk Supreme Court of Ohio,
By J. G. OBERMEYRE, *Deputy.*

Endorsed on cover: File No. 18,656. Ohio supreme court. Term No. 428 The Cincinnati Street Railway Company, plaintiff in error, *vs.* Charles B. Snell. Filed September 2, 1902.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 124.

THE CINCINNATI STREET RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

CHARLES B. SNELL, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This is a proceeding in error to the supreme court of the State of Ohio. The cause was brought here upon a similar proceeding in the October term of 1899 and was numbered 364 of that term. When the cause was reached for argument, this court of its own motion raised a question of jurisdiction and finally dismissed the case on that ground, because:

"The judgment of a State court reversing the judgment of an inferior court on account of its refusal to change the venue of the action and remanding the case for further proceeding, is not a final judgment to which a writ of error will lie" (179 U. S., 395).

As stated in our first brief, the case was begun in the court of common pleas of Hamilton county, Ohio. It was an action in tort of Snell, defendant in error, against the Street Railway Company, plaintiff in error, to recover damages for personal injuries which were alleged to have been caused by negligence of the Street Railway Company. The cause was tried in that court with a jury, at the request of Snell, and a verdict was rendered in favor of the Street Railway Company upon the merits on April 20, 1897 (R., 31).

Motion for new trial was made and overruled, and judgment rendered for defendant on the verdict May 22, 1897 (*id.*). The cause was thus set down upon plaintiff's request, without objection being made to the impaneling of the jury, and no exception was taken during the progress of the trial nor to the charge of the court under which the verdict was rendered, and no proceeding in error or otherwise to reverse the judgment so rendered upon the verdict was ever begun or prosecuted, except only as we shall now proceed to describe.

On November 27, 1896, at a term long prior to the trial just mentioned, the plaintiff below, Snell, made a motion for a change of venue, and at the same time filed his own affidavit and also the affidavits of five other persons (Rec., 8 to 12).

On December 26, 1896, this motion was overruled and exception taken (R., 8). On January 27, 1897, a bill of ex-

ceptions was allowed and filed, showing what occurred upon the motion so overruled (*id.*).

The plaintiff below filed a petition in error in the circuit court of Hamilton county to reverse the judgment aforesaid in favor of the Street Railway Company, upon the single ground that the court erred in overruling his motion for a change of venue. The circuit court affirmed the judgment of the court below. The plaintiff below thereupon prosecuted error to the supreme court of Ohio, assigning as his ground of error the action of the courts below in overruling and in affirming the overruling of said motion for change of venue.

On May 19, 1899, the supreme court of Ohio reversed the judgment rendered in favor of the Street Railway Company, as follows:

"On consideration whereof, it is ordered and adjudged by this court that the judgment of the said circuit court be, and the same hereby is, reversed, with costs; and proceeding to render the judgment which the court should have rendered, it is considered and adjudged that the judgment of the court of common pleas be and the same is hereby reversed with costs, for error in overruling the motion of the plaintiff for a change of venue * * * This court order it to be certified and made part of the record in this case and of the judgment and entry of reversal heretofore rendered and made herein that in the rendition of said judgment of reversal it became and was material to the case to determine whether the certain act of the General Assembly of the State of Ohio, known as and numbered section 5033 of the Revised Statutes of said State of Ohio was of binding force and validity against the said Cincinnati Street Railway Company, * * *

"And the court orders it to be further certified that said defendant in error claimed and asked this court to hold that said act, to wit, section 5033 of said Revised Statutes, is repugnant to the first section of the XIV amendment of the Constitution of the United States. * * *

"And the court orders it to be further certified that the decision of the court was and is in favor of the validity of said statute" (R., 14 and 15).

The decision of the supreme court of Ohio upon that hearing will be found in 60 O. S., 256.

The cause was dismissed in this court for the reason, before stated, that the judgment aforesaid of the supreme court of Ohio was not final.

After the cause was remanded, to wit, May 11, 1901, the court of common pleas of Hamilton county, in obedience to the judgment of the supreme court of Ohio, made an order changing the venue to Clermont county, in said State; to which order the Street Railway Company excepted (R., 35, 36). After the execution of the order for change of venue the Street Railway Company filed its motion in the court of common pleas of Clermont county to remand the cause to the court of common pleas of Hamilton county, upon the ground, among others, that the statute in pursuance of which the change of venue was ordered was in conflict with the Constitution of the United States, and particularly with article XIV in amendment thereof (R., 19). This motion was overruled by the Clermont County common pleas court; to which the Street Railway Company duly excepted (R., 37, 38). On July 1, 1901, the trial was had and a verdict rendered in favor of plaintiff below for $500 (R., 38). Judgment was rendered

upon this verdict against the Street Railway Company in said sum; to which exception was taken (R., 39). After due proceedings in said court, petition in error was filed in the circuit court of Clermont county, upon the ground, among others, that the court of common pleas of Hamilton county erred in its order requiring a change of venue to be made to the court of common pleas of Clermont county, and that the court of common pleas of Clermont county erred in overruling the motion filed by the plaintiff in error to remand the cause to the court of common pleas of Hamilton county (R., 40). The circuit court of Clermont county affirmed the judgment below, holding that the act of Ohio providing for the change of venue is not in conflict with the Constitution of the United States, and particularly with article XIV in amendment thereof (R., 41, 42), to which plaintiff in error excepted.

Plaintiff in error thereupon filed its petition in error in the supreme court of Ohio to reverse the judgment of the circuit court and of the court of common pleas, upon the ground, among others, that the statute of Ohio under which the change of venue in question was made was in contravention of the Constitution of the United States, and particularly of article XVI in amendment thereof (R., 44).

On January 17, 1902, the supreme court of Ohio affirmed the judgment of the court below, holding that the statute is not in conflict with the Constitution of the United States, and particularly with article XIV in amendment thereof (R., 43). And the same court ordered "it to be certified and made to appear on the record in the case and of the judgment and entry of affirmance rendered and made therein, that in the rendition of said judgment of affirmance it be-

came and was material to the case to determine whether a certain act of the General Assembly of the State of Ohio, known as and numbered section 5030 (formerly section 5033) of the Revised Statutes of the State of Ohio, was of binding force and validity against the said The Cincinnati Street Railway Company. * * * that said plaintiff in error claimed and asked this court to hold, that said section * * * of said Revised Statutes is repugnant to the Constitution of the United States, and in particular to section 1 of article XIV in amendment thereof. * * * And * * * that the decision of the court was and is in favor of the validity of such statute. * * * and that this court is the highest court of law and equity in the State of Ohio in which a decision of this case can be had" (R., 46, 47).

To reverse the judgment of the supreme court of Ohio, the writ of error was allowed in this court August 1, 1902 (R., 52).

ASSIGNMENT OF ERRORS.

The errors assigned at the time of the allowance of the present writ of error will be found on page 51 of the record. So far as our argument is concerned, we rely upon the first one, as follows:

"That the supreme court of the State of Ohio erred in holding that section 5033 of the Revised Statutes of Ohio, involved in said cause, is not in conflict with the Constitution of the United States, and particularly with article fourteenth in amendment thereof."

Section 5030 (formerly section 5033) of the Revised Statutes of Ohio is as follows:

"When a corporation having more than fifty stockholders is a party in an action pending in a county in which the corporation keeps its principal office, or transacts its principal business, if the opposite party make affidavit that he cannot, as he believes, have a fair and impartial trial in that county, and his application is sustained by the several affidavits of five credible persons residing in such county, the court shall change the venue to the adjoining county most convenient for both parties."

PROPOSITION.

Section 5033 (now 5030) of the Revised Statutes of Ohio arbitrarily selects a certain portion of a type or class of persons (to wit, corporations having fifty or more stockholders) and not only denies to them rights as actors in judicial proceedings which are accorded to the rest of the class, but also denies to them a substantial privilege which it grants to opposing litigants in the same cause. The statute therefore denies to such proscribed litigants the equal protection of the laws, which is secured to all persons by section 1 of amendment fourteenth to the Federal Constitution.

ARGUMENT.

It is settled that corporations are persons within the meaning of the fourteenth amendment (Smyth *vs.* Ames, 169 U. S., 466, at 522). Plaintiff in error is a domestic corporation (R., 1 and 2). It was therefore entitled in the court, where this suit was brought, to privileges equal to those of its adversary, Snell, touching the right to change of venue, unless at least the corporation was eliminated in this regard from

the category of natural persons through some rational and not arbitrary statutory classification.

Blake *vs.* McClung, 172 U. S., 239, 260–'1.

Cotting *vs.* Kansas City Stock Yard Co., 183 U.S., —.

In view of the exhaustive discussions and the decisions of this court, some of them of recent date, upon subjects kindred to, and we think precisely like the one presented here, we do not deem it necessary now to burden the court with elaborate argument or citations to show that it is beyond the legislative power, either Federal or State, to accord rights or privileges to one class of litigants which are denied to others under like or similar circumstances; or, in short, to deny them the right to stand equal before the law. This is especially true in a case like this, which involves no statutory police regulations, but only the respective rights of parties in the administration of justice in civil actions.

Indeed, the administration of justice is a subject which, as much as any other conceivable subject, demands the recognition and enforcement of equality of right. It was said by Mr. Justice Brewer, in *Cotting vs. Kansas City Stock Yard Co.*, 183 U. S., at 110:

"It has been more than once said judicially that one of the principles upon which this Government was founded is that of equality of right."

In the same case (at p. 105) language used by Mr. Justice Catron before he came upon this bench was cited approvingly:

"Every partial or private law, which directly proposes to destroy or affect individual rights, or does the same thing

by affording remedies leading to similar consequences, is unconstitutional and void. Were this otherwise, odious individuals and corporate bodies would be governed by one rule, and the mass of the community, who made the law, by another."

It was said by Mr. Justice Field, in speaking of the fourteenth amendment, in Barbier *vs.* Connolly, 113 U. S., at 30 (approved at p. 106 in the case above cited):

"That equal protection and security should be given to all under like circumstances * * *; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs * * *"

An inspection of the statute in question (O. R. S., sec. 5033, p. 7, *supra*) will show that its purpose is, in an action to which a corporation having more than fifty stockholders is a party, to give to the opposite party, whether plaintiff or defendant, the right himself or itself (if a corporation with *less* than fifty stockholders), when supported by five resident affiants, to change the venue of the cause. We say *himself or itself* because, according to the interpretation of the supreme court of Ohio, when such affidavits are filed the court has no discretion, but is bound to order the change of venue. The statute, according to the court, does not require that the affidavits should state facts from which the court may itself deduce the conclusion as to whether a "fair and impartial trial" can or cannot be had in the county; but it only requires that each affiant shall state that "he believes" that such a trial cannot be had there. Such was the construction given to the act in this very case (*Snell vs. Street Rail-*

way Co., 60 Ohio St., at 270). Thus the right to change of venue so given to the party opposed to the corporation having fifty or more stockholders is both substantial and arbitrary in its character. It leaves nothing for the court to do, but to submit to the order demanded.

It is to be observed further that the statute in question makes no mention of the residence of the 50 stockholders. They may be in greater part or in whole non-residents of the county in which the action is brought, or even of the State itself, and still the change of venue would have to be allowed upon the mere filing of the affidavits. The existence of the prescribed number of stockholders is thus made the token for change of venue, no matter where the persons reside or whether they possess any influence in the county where suit is brought or not. If there were just 49 stockholders in number and all of them residents of the county where suit was brought, no change of venue could be obtained. Thus the variation in membership of a corporation of a single member works the transformation.

Now, our complaint is not that it is beyond the power of legislation to vest arbitrary right or power of this kind in a litigant; but it is that the right must be extended equally to all litigants in the case.

It is claimed that this legislation can be upheld upon its classification. But to sustain the act upon that theory, it must be shown that the association of 50 persons as corporate stockholders differs in some essential and constant characteristic from the association of that many persons in any other relation. It must be shown, for instance, that the association of 50 persons as copartners, or as employees under an employment of one or more individuals, or the like, working in a

common interest for the promotion of a common enterprise, possess differentiating attributes of a rational and continuing character from the association of a like number of persons united as corporate stockholders and engaged with like interests in the promotion of a like enterprise. It must be shown, too, that 50 stockholders possess differentiating characteristics from 49 stockholders. What could be the differentiating characteristics between such bodies of men, whether they be associated as corporate stockholders or otherwise? Can it be that the corporate character of the association possesses some substantial and permanent attribute, which does not obtain among men associated in other relationships? To affirm this would be to say that it is the fiction or abstract character of relations, rather than the men themselves. If undue influence or undue prejudice be the evil sought to be remedied, this evil cannot in the nature of things be the result of the character of relationship; it must be the aggregation of persons and the influence they as individuals may exert or the prejudice they may incur. It must also be shown that undue local influence is uniformly in favor of such corporations, when in fact it is common knowledge that they are equally, indeed more, liable to be subject to undue local prejudice against them.

But we need not pursue this subject. It has been exhausted by the decisions of this court.

In Cotting *vs.* Kansas City Stock Yard Co., 183 U. S., 79, in the course of the opinion of the court, delivered by Mr. Justice Brewer (at p. 108), approval was given to the case of The State *vs.* Haun, 51 Kan., 146, where a statute was presented for consideration, providing for the payment of the wages of laborers in money, coupled with this provision:

"SEC. 4. This act shall apply only to corporations or trusts, or their agents; lessees or business managers, that employ ten or more persons."

Quoting at page 108 from the decision of the supreme court of Kansas:

"The obvious intent of the act is to protect the laborer and not to benefit the corporation. Why should not the nine employés who work for one corporation be equally protected with the eleven engaged in the same line of employment for another corporation? If such law is beneficial to wage earners in the one instance, why not in the other? The nine men lawfully paid for their labor in goods at a truck store might with much reason complain that the protection of the law was unequal as to them, when they saw eleven men paid in money for the same service performed for another corporation engaged in a like business. Such inequality destroys the law."

Further, in the course of the opinion in Cotting *vs.* Kansas City Stock Yard Co., in speaking of the classification in that State, this court, at page 112, said:

"We must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one or two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other. There can be no pretence that a stock yard which receives 99 head of cattle per day a year is not doing precisely the same business as one receiving 101 head of cattle per day each year. It is the same business in all its essential elements, and the only difference is that one does more business than the other. But the receipt of an extra two head of cattle per day does not change the character of the business. If

once the door is opened to the affirmance of the proposition that a State may regulate one who does much business, while not regulating another who does the same but less business, then all significance in the guarantee of the equal protection of the laws is lost, and the door is opened to that inequality of legislation which Mr. Justice Catron referred to in the quotation above made. * * *

"We think therefore that the principle of the decision of the supreme court of Kansas in State *v.* Haun, *supra*, is not only sound, but is controlling of this case, and that the statute must be held unconstitutional, as in conflict with the equal protection clause of the fourteenth amendment."

In the case of Connolly *vs.* Union Sewer Pipe Co., 184 U. S., 540, Mr. Justice Harlan, delivering the opinion of the court, says (at page 560):

"This court has held that classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. * * * But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the fourteenth amendment forbids this * * * No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. * * * It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the fourteenth amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection'" (citing Gulf, Col. and Santa Fe Ry. *vs.* Ellis, and Cotting *vs.* Kansas City Stock Yards Co., *supra*).

In the case just cited—Gulf, Col. and S. Fe Ry. Co. *vs.* Ellis—the statute in question sought to give suitors having claims against railway corporations which did not exceed $50 in amount (who presented the same verified by affidavit and payment was refused), the right to recover an attorney's fee in addition to all their costs. The supreme court of the State had held this statute to be valid, but this court, in its opinion reversing the judgment of the supreme court, said (p. 153):

Litigants "do not enter the courts upon equal terms. They must pay attorney's fees if wrong; they do not recover any if right; while their adversaries recover if right and pay nothing if wrong. In the suits, therefore, to which they are parties they are discriminated against, and are not treated as others. They do not stand equal before the law. They do not receive its equal protection." * * *

And at page 161, quoting with approval the language of the supreme court of Mississippi in Chicago, St. Louis, &c., Railroad *vs.* Moss, 60 Miss., 641:

"'The right of appeal cannot be fettered and clogged with reference to the parties litigant or the attitude they occupy as plaintiff or defendant. All litigants, whether plaintiff or defendant, should be regarded with equal favor by the law, and before the tribunals for administering it, and should have the same right to appeal with others similarly situated. All must have the equal protection of the law, and its instrumentalities. The same rule must exist for all in the same circumstances.'"

The impediment, if any, to a fair and impartial trial by a jury, so far as the place of trial is concerned, is necessarily the existence of favor or prejudice for or against one of the

parties to an action. The existence of such favor or prejudice cannot be predicated of the *number* of those who are interested in the litigation, any more than it could be of their wealth or poverty or of the amount of the capital stock of the corporate defendant; and, consequently, if the right to a change of venue is to be made to rest upon the belief of five or more affiants that such favor or prejudice for or against either party exists to prevent a fair trial, the law must necessarily accord to either party equally the right to a change of venue upon the existence of such belief.

We desire in this connection to call attention to section 5032, now 5029, of the Revised Statutes of Ohio. That statute provides in substance that if upon complaint made by any party to a lawsuit it is made to appear to the satisfaction of *the court* that a fair and impartial trial cannot be had, the court may order a change of venue. The point of difference which we wish to make clear is not alone the difference in function which the two statutes vest in the courts, but also and particularly that under section 5032 any and all of the parties to the litigation are given the right *upon proof* to a change of venue, while under section 5033 "the opposite party" alone is given that right *arbitrarily*.

The statute under review cannot be upheld under the rule laid down by this court touching the right of States to establish police regulations (Ry. Co. *vs.* Matthews, 174 U. S., 96); or to classify the subjects of taxation (American Sugar Refining Co. *vs.* Louisiana, 179 U. S., 89,—Billings *vs.* Illinois, 188 *id.*, 97); or to classify the contracts of certain corporations, like insurance companies (Fid. Mut. Life Association *vs.* Mettler, 185 U. S., 308, 326).

Nor can the present statute be confounded, as our adversaries unwittingly confuse it, with State legislation limiting the right of trial by jury as to *the whole number* of a natural and distinct class (Walker *vs.* Sauvinet, 92 U. S., 90); or with a statute prohibiting all foreign corporations violating the enactment from doing business within the State (Waters Pierce Oil Co. *vs.* Texas, 177 U. S., 28); or with a State law vesting in the courts power to change the place of trial as to all persons alike who are prosecuted for criminal violations (Gut *vs.* The State, 9 Wall., 35).

The present statute arbitrarily distinguishes between corporations possessing fifty or more stockholders and corporations having less than fifty; and it not only denies to the former the right to have their cases tried in the same tribunal which it accords to the latter, but it denies to the former the very same right which it gives to the latter and to every adverse individual litigant in the same identical cause. Manifestly this concerns only equality of right to trial in a court of justice.

Can it be then that the imposition upon one party of a charge as counsel fee differs in principle from the denial of a substantial right to one party litigant which is given to the other? Can it be that the imposition of a liability on a corporate employer based upon the number of its employees differs in principle from the denial of a right to a corporate litigant based upon the number of its members? Can it be that the regulation of the charges made in a business in which the public becomes interested, like stock yards, based upon the number of cattle handled daily, differs in principle from the denial of a substantial right to a corporation based upon the number of its stockholders? That would be to re-

duce the equality of right guaranteed by the Constitution to a mere question of money. Can it be that the right of appeal cannot be fettered or clogged as to one alone of two parties litigant, while the right to a change of venue can be so fettered and clogged?

If it should be suggested that the decision of the supreme court of Ohio in this case is binding, the answer in respect of such subjects as the one now under review is:

"This court is not concluded by the opinion of the supreme court of the State (Yick Wo. *vs.* Hopkins, 118 U. S., 356 at 366)."

Atchison, Topeka and C. R. R. *vs.* Matthews, 174 U. S., 96 at 100.

We therefore respectfully submit that we are entitled to a reversal of the decision of the supreme court of Ohio.

JOHN W. WARRINGTON,
E. W. KITTREDGE,
Counsel for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 124.

THE CINCINNATI STREET RAILWAY COMPANY,
PLAINTIFF IN ERROR,

v.

CHARLES B. SNELL.

(60 Ohio State Reports, 256.)

SNELL *v.* THE CINCINNATI STREET RAILWAY CO.

Change of venue—In suit by or against a corporation—Section 5033, Revised Statutes—Not in conflict with State or Federal Constitution—Sufficiency of affidavit of applicant—Presumption of credibility of affiant—Rule as to evidence—Nature of order overruling application for change of venue—Error not waived, when.

1. Section 5033 of the Revised Statutes, which provides for a change of venue "when a corporation having more than fifty stockholders is a party in an action pending in any county in which the corporation keeps its principal office or transacts its principal business, if the opposite party make affidavit that he cannot, as he believes, have a fair and impartial trial in that county, and his application is

sustained by the several affidavits of five credible persons residing in the county," is not in conflict with the State or Federal Constitution.

2. It is not necessary, to entitle the applicant to the benefit of the statute in a case for which it provides, that his affidavit shall state the grounds of his belief that he cannot have a fair and impartial trial in the county in which the action is pending, nor that the sustaining affiants shall state the grounds of their belief. It is sufficient that the affidavit of the applicant state that he cannot, "as he believes," have a fair and impartial trial in that county. And his application is "sustained" within the purview of the statute, when there is filed the several affidavits of five credible persons residing in the county, stating that they entertain the same belief. When so complied with, the statute is mandatory.

3. Unless the character of an affiant for truth is attacked, he will be presumed to be a credible person, and evidence in his support is not required nor admissible; but if attacked, it becomes a question for the court to determine whether he is a credible person, and unless found to be so, the application may be denied.

4. Whether the action is one in which a corporation having more than fifty stockholders is a party, or is pending in the county where the corporation keeps its principal office or transacts its principal business, are questions for the determination of the court in which the application is made; and if the statement of these facts in the affidavit is denied, the burden is on the applicant to establish them.

5. An order overruling an application for a change of venue is not an order made in a special proceeding which may be made the foundation of an independent proceeding in error, but is properly reviewable on error prosecuted to the final

judgment in the action. The error is not waived by proceeding to a trial of the action, without objection by the applicant.

(Decided May 9, 1899.)

ERROR TO THE CIRCUIT COURT OF HAMILTON COUNTY.

Action was brought in the court of common pleas of Hamilton county, by Charles B. Snell, against the Cincinnati Street Railway Company, a corporation organized under the laws of this State, to recover damages sustained by the plaintiff in consequence of alleged negligence of the defendant. The court overruled a motion filed by the plaintiff for a change of venue, to which he took exceptions, and obtained a bill of exceptions showing that his motion was supported by his own affidavit, and the several affidavits of five other persons, residents of Hamilton county, and that no other affidavits or evidence was offered by either party on the hearing of the motion. The affidavit of the plaintiff is as follows:

"Charles B. Snell, being duly sworn, says that he is the plaintiff in the above-entitled action, now pending in the court of common pleas, of the said Hamilton county; that the defendant in the above-entitled action is a corporation, and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the defendant keeps its principal office, and in which said county the said action is now pending, and that this affiant cannot, as he believes, have a fair and impartial trial in the said county."

The affidavits of the other five persons are substantially alike, and the following copy of one will suffice to show the character of all of them:

"Lewis Stentz, a credible person, being duly sworn, says that he resides in the said Hamilton county, Ohio; that he

is now and for one year last past, has been engaged in the business of life insurance, as managing agent of the Northwestern Life Assurance Company, and has resided for the past five (5) years in the city of Cincinnati, in the said county; that Charles B. Snell is the plaintiff in the above-entitled action, now pending in the court of common pleas of the said Hamilton county; that The Cincinnati Street Railway Company, the defendant in the above-entitled action, is a corporation, and has more than fifty stockholders in the said Hamilton county, Ohio, in which said county the said defendant keeps its principal office, and in which said county the said action is now pending, and that this affiant believes that the said Charles B. Snell cannot have a fair and impartial trial in the above-entitled action in the said county."

The motion having been overruled, a trial was had to a jury upon the issues joined by the pleadings, which resulted adversely to the plaintiff; and from the judgment rendered on the verdict he prosecuted error to the circuit court, where the judgment was affirmed, and he now brings the case to this court. The only error assigned here and in the circuit court is the refusal of his application for the change of venue. Any other facts that may be deemed important will be stated in the opinion.

John W. Wolfe and Thomas L. Michie, for plaintiff in error.

The first question that arises is raised by the opinion of Judge Cox, of the circuit court, that the order overruling the motion for change of venue is a final judgment in the sense that error proceedings should have been taken from the overruling of the motion. This was not the view of counsel for defendant in error.

Section 6707, Revised Statutes, defines what is a final order, which may be vacated, modified or reversed.

Clearly, an order overruling the motion for a change of venue did not, in effect, determine the action nor prevent a judgment. Further, "an order affecting a substantial right made in a special proceeding or upon a summary application in an action after judgment."

Clearly, an order denying a change of venue was not an order made in a special proceeding, nor upon a summary application in an action after judgment.

An entry of this sort in a case is no more in a special proceeding than any other step or motion in the case, because the motion for a change of venue relates merely to the trial of the main cause of action, and the entry does not accomplish anything further than to determine the court in which the case shall be tried (Mix *v.* Kepner, 81 Mo., 93).

The Missouri statute is very much like our section 5032 of the Revised Statutes, which leaves to the court the exercise of reasonable and sound discretion in directing the change of venue, though in many States, the use of the word "may" in statutes authorizing a change of venue, is deemed mandatory when the showing made entitled the applicant to the change.

In some States where the practice allows error by exceptions, it would be proper to go to the Supreme Court on exceptions to the order denying the motions (Hilliard *v.* Beattie, 58 N. H., 112; Skelly *v.* Jefferson Branch Bank, 9 Ohio St., 607; St. Louis, Oak Hill & C. R. Co. *v.* Fowler, 113 Mo., 458; Dowling *v.* Allen, 88 Mo., 300; Turner *v.* Hitchcock, 20 Iowa, 310).

The provision of section 5033 *are* very plain, and, as we claim, mandatory, leaving no discretion whatever in the court when the conditions of the statute have been met. Statutes regulating change of venue are common to most of the States of the Union, and have been uniformly enforced by the various courts (Swan *v.* Bournes, 47 Iowa, 501; Peyton *v.*

Johnson, 37 Neb., 886; Bachman *v.* Milwaukee, 47 Wis., 435; Buck *v.* Eureka, 97 Cal., 135; Porter *v.* Mann, 4 Hill (N. Y.), 540; State *v.* Superior Court, 9 Wash., 668; Bixby *v.* Carskadden, 63 Iowa, 164; Albert *v.* State, 66 Md., 325.)

In a number of States statutes authorizing a change of venue upon a prescribed showing are construed as mandatory (vol. 4, Encl. of Pleading and Practice, 440 and 441, citing authorities from twenty-four different States; Goodnow *v.* Litchfield, 63 Iowa, 275; Deere *v.* Bagleg, 80 Iowa, 197; Hanna *v.* People, 86 Ill., 243).

The court will observe that section 5033, under which this application is made, follows section 5032. It is evident that the legislature intended to provide that in a certain class of cases the right to a change of venue should be established upon a prescribed showing.

The presumption of law is that any court in this State will give a fair and impartial trial, and statutes providing for change of venue have been enacted in order to insure a trial without prejudice and without undue influence. The first care of the law is to secure to every litigant a fair and impartial trial.

It is not a question of the county in which the trial takes place, but of the constitutional right of every litigant to a fair and impartial trial. Questions of inconvenience or delay or additional expense are not arguments with a court in construing the law, although such arguments might be addressed to the legislature.

The constitution of the State of Ohio confers no jurisdiction whatever on the court of common pleas in either civil or criminal cases. It is made capable of receiving jurisdiction in all such cases, but can exercise none until conferred by law (Stephens *v.* State, 3 Ohio St., 453; The State of Ohio *v.* Thomas McGehan, 27 Ohio St., 280).

The jurisdiction of the courts of common pleas of this State is merely a matter of legislation (State *ex rel. v.* Rab-

bitts, 45 Ohio St., 178; Hilliard *v.* Beattie, 58 N. H., 112; State *v.* Shaw, 43 Ohio St., 224).

The different statutes of Ohio providing for change of venue are as follows:

Sections 550, 5032, 5033, 5704, 7263.

Paxton, Warrington & Boutet and Kittredge & Wilby, for defendant in error.

The section 5033 is in conflict with article 1, section 2 and 16 of the bill of rights of our constitution, and also with article XIV, section 1, of the United States Constitution. It does not furnish either "equal protection and benefit" or "remedy by due course of law" under our own constitution; and it denies "the equal protection of the laws" under the Federal Constitution (Coal Co. *v.* Rosser, 53 Ohio St., 12; State of Ohio *ex rel. v.* Ferris, *id.*, 314; Gulf, Colorado and Santa Fe Ry. *v.* Ellis, 165 U. S., 150; Branville Coal Co. *v.* People, 147 Ill., 66; County of San Mateo *v.* Southern Pac. R. Co., 13 Fed., 722; County of Santa Clara *v.* Southern Pacific R. Co., 18 *id.*, 385; Shaver *v.* Pennsylvania Co., 71 *id.*, 931).

Was not the second application for change of venue to be controlled by the rule that a decision of a motion heard upon the merits is conclusive of a subsequent motion in the same case, based upon the same grounds? (Meyer *v.* Wick, 15 Ohio St., 548; Day *v.* Mertlock, 87 Wisc., 577; Dick *v.* Williams, 87 Wisc., 651; Parrot *v.* Hodgson, 46 Ill. App., 232; Obear *v.* Gray [illegible]., 455; Wingo *v.* Watson *et al.*, 98 N. C., 482).

In presenting the question of waiver we will not be understood as impliedly conceding that error was committed in overruling the motion for change of venue. We contend there was no error, and shall endeavor to prove it later. But we believe plaintiff has precluded himself from questioning the correctness of the ruling.

In the first place, it was not necessary for plaintiff to go to trial upon the merits of the cause before prosecuting a proceeding in error to reverse the order denying change of venue; because that order was a final order within the meaning of Revised Statutes, section 6707. If it was a final order, then the claim made on behalf of plaintiff that there was nothing else to do after it was made except to go to trial on the merits, is unfounded (Watson & Co. *v.* Sullivan, 5 Ohio St., 42; Harrison *et al. v.* King *et al.*, 9 Ohio St., 388; Young *v.* Gerdes, 42 Ohio St., 102; C. S. & C. C. R. Co. *v.* Sloane, 31 Ohio St., 1; Burke *v.* Ry. Co., Ohio St., 631; City of Lancaster *v.* Miller, 58 Ohio St., 558; Home Life Insurance Co. *v.* Dunn, 20 Ohio St., 175).

It follows that there was no necessity for plaintiff to forego a proceeding in error and voluntarily enter upon and conclude a trial on the merits of the action; and that there was no right in him to do so and still to say he has not waived whatever error may have occurred in overruling the motion for a change of venue. It cannot be that a plaintiff should thus be permitted to subject his adversary to such additional trouble and expense. The plaintiff had it in his power to waive the error and proceed to final trial. What stronger evidence is needed to prove the waiver, than such voluntary conduct as this? There were two courses open to him. One was to secure a reversal for error, if error there were; the other was to waive the error and go to final trial in the same tribunal. That he adopted the latter course is proved by the fact that he asked for the trial, obtained it and concluded it without an exception, either to the jury or to any action of the trial court. He proceeded on the apparent hypothesis that he was, when the trial took place, satisfied with everything that had occurred, as well as with what was passing. If a party does not resist as far as he can, his submission to a trial on the merits is a waiver of all previous errors. It need scarcely be said that if it was open to plaintiff to prosecute error to the order denying the change

of venue, he did not resist jurisdiction to try the merits as far as he was permitted (Andrews *v.* Youngstown, 35 Ohio St., 218; Collins *v.* Davis, 33 Ohio St., 567; Jones *v.* Booth, 38 Ohio St., 405; Matthews *v.* Davis, 39 Ohio St., 55; Skelly *v.* Bank, 9 Ohio St., 606).

It is well known that in order to avoid waiver of error, the practice in the Federal courts as well as our own, in cases where the right of removal of causes from State courts to Federal courts has been wrongly denied, is never to proceed to trial upon the merits in the State courts after such denial and before the proceeding in error for reversal has been disposed of, except under protest and exception (Removal cases, 100 U. S., 457; Railroad Co. *v.* Mississippi, 102 U. S., 135; Pacific R. R. Co. *v.* Ketchum, 101 U. S., 289; Hadley *v.* Dunlap, 10 Ohio St., 1).

That proof of the acts of waiver, additional to those contained in the record is properly brought before the court by the answer of defendant in error, is shown by the decision in Collins *v.* Davis, 32 Ohio St., 76, before cited.

Our contention is that Revised Statutes, section 5033, vests judicial power and discretion to determine whether plaintiff's affidavit is "sustained" by the "affidavits of five credible persons" (State *ex rel.* *v.* Wilson, 12 O. C. C., 636; 7 Circ. Dec., 17; Snell *v.* Cincinnati Street Railway Co., Com. Pleas Court, 2 S. & C. P. Dec., 669; Wright & Sauer, adm'r, *v.* Cincinnati Street Railway Co., 4 O. N. P., 252; 7 S. & C. P. Dec., 19; Stermer *v.* The Cincinnati Street Railway Co., Superior Court, 5 N. P. Rep., 419).

These are decisions, it is true, of courts inferior to this court. They are the only decisions upon the statute in question which we have been able to find. We offer their reasoning.

The logic of these decisions that there is discretion in the respect mentioned is that the belief or charge on the part of the plaintiff that he can not have a fair and impartial trial in the county, is issuable; for otherwise the mere presence

of five affidavits of as many residents, stating bare conclusions, would operate as an imperative mandate upon the court.

This discretion cannot be exercised unless the sustaining affidavits contain facts from which the court itself, instead of affiants, can deduce conclusions as to whether or not such a trial can be had. Facts of a probative or evidential nature are the essential conditions precedent upon which any hearing and determination can take place.

Indeed the ordinary meaning of the words "sustained" and "credible" imports the necessity to produce facts from which the court itself may determine the correctness of the conclusion stated in the plaintiff's affidavit. Anything less than this would make the repetition of a conclusion its only test of correctness. This is a contradiction of judicial discretion and determination. Can it be that the court is bound to accept affidavits of interested counsel as the affidavits of credible persons?

We shall derive aid here from the Federal statutes and decisions concerning removals of certain cases from State courts to Federal courts wherever it is "made to appear" that "from prejudice or local influence" justice cannot be obtained in a State court (Carson & Rand Lumber Co. *v.* Holtzclaw, 39 Fed., 885; *In re* Pennsylvania Co., 137 U. S., 451; Mechanics' and Traders' Bank *v.* Loucheim, 8 N. Y. Supp., 520).

It is said our interpretation would make section 5033 the same as section 5032. But examination will show that the act from which section 5033 was derived was passed prior to the passage of the acts from which section 5032 came. The first one was passed April 24, 1852 (Ohio L., 100). The acts upon which section 5032 is founded were passed March 11, 1853 (51 Ohio L., 65), and February 10, 1857 (54 Ohio L., 10), respectively. The inevitable conclusion to be drawn from this legislation is that the first act was not broad enough to meet the needs expressed in the later acts. The

first act authorized a change of venue only where a corporation having more than fifty stockholders was a party, no matter whether a fair and impartial trial could be had or not in the county. Thus broadening the legislation at a later period does not warrant a conclusion that the later acts were designated or intended to change the meaning or purpose of the first act. And it would be a strange claim to urge that the first act should receive a different construction from that which its language imports, simply because the later acts were passed.

WILLIAMS, *J.*:

The application for the change of venue was made in this case under section 5033, of the Revised Statutes, which provides that: "When a corporation having more than fifty stockholders is a party in an action pending in any county in which the corporation keeps its principal office, or transacts its principal business, if the opposite party make affidavit that he can not, as he believes, have a fair and impartial trial in that county, and his application is sustained by the several affidavits of five credible persons residing in such county, the court shall change the venue to the adjacent county most convenient for both parties." By the preceding section general provision is made for change of venue in all cases, "when it appears to the court that a fair and impartial trial can not be had in any county where the suit is pending."

It is urged at the outset that section 5033, is in violation of both the State and Federal constitutions, because, it is said, it applies an exceptional rule for the change of venue in actions against corporations within its descriptive terms, different from that applicable to parties in other actions, and one not equally applicable to both parties in the same action, and thus denies such corporation the equal benefit and protection of the law, and remedy by due course of law. We are unable to adopt that view. It has never been regarded as essential to the validity of remedial procedure that it

should be applicable in all of its provisions to all persons or parties, alike. Different situations and conditions often render appropriate and necessary different provisions, the necessity or propriety of which rests largely in the legislative discretion. And, as corporations exist, and hold, or exercise their powers and franchises only under favor of the State, they are subject to all reasonable regulations which the legislative body may deem it proper to prescribe, from time to time, with respect to the places where they may sue and be sued, and changes in the place of trial, though these regulations be different from those applicable to individuals, or different for different classes of corporations, or for different conditions of corporations of the same class. Distinctions of this nature have not been infrequent since the adoption of the present constitution. Generally, actions against individuals must be brought in the county where the defendant resides or may be personally served with process; and generally, actions against corporations are required to be brought in the county in which the corporation is situate, or has its principal office or place of business, or an office or agent; while insurance companies may be sued in any county where the cause of action or any part of it arose, a mining corporation in any county in which it owns or operates a mine, and a railroad company in any county into which the road runs. Of a like nature are regulations for changes of venue. They are designed to secure to parties a fair and impartial trial of their causes, which is the ultimate and highest purpose of judicial proceedings; and the extent to which such regulations may go, for the accomplishment of that purpose, is addressed to a sound legislative discretion, in view of the nature of the case to be provided for, and the probable conditions likely to arise.

In the enactment of this statute, the legislature, no doubt, was impressed with the belief that corporations with many stockholders and employés, might possess such widespread local influence where their business is carried on, that it would operate to the prejudice of the opposite party in a

trial in that locality; and it is but a natural inference from the absence of a provision for a change of venue on the application of the corporation where the opposite party is not a corporation of the same kind, that such provision was deemed unnecessary, since, in that case, a change would not be desired by the corporation, as it would be to its interest to have the trial in the county where its influence prevailed. Where, however, both parties to the action are corporations of the kind referred to in the statute, either is entitled to a change of venue upon complying with its provisions, so that, the statute operates uniformly upon all parties in the same situation. In neither case, however, is any party deprived of the equal protection of the law, for each is assured of a fair trial, with equal opportunities to establish and enforce his rights; nor is the remedy by due course of law denied, because in the forum to which the cause is removed, the trial is conducted in the same way, under the same mode of procedure, as in that from which it was changed, with all remedial rights of the parties unimpaired. The only complaint is that the trial will be attended with some inconvenience and additional expense; but in that respect both parties are equally affected, and must necessarily be so in any change of venue for any cause; and the objection is, we think, insufficient to annul a statute, otherwise unobjectionable, which, in the legislative estimation, was demanded in order to secure the impartial administration of justice. The principle of this statute is closely analogous to that of congressional legislation relating to the removal of causes from State to Federal courts by which, in a suit between a citizen of a State in which it is brought and a citizen of another State, the latter only is authorized to have the cause removed to a Federal court. The right is not given to the former, as remarked in Dillon on the Removal of Causes, page 14, "because it was not supposed that he would have any grounds to object that he was sued in the courts of his own State." The validity of such legislation is well established.

This statute imposes no penalty or burden upon one suitor or class of suitors from which others similarly situated are exempt, as did the statute held invalid in Coal Co. *v.* Rosser, 53 Ohio St., 12; nor does it affect any right of property of some owners differently from others in the same situation, as did the act declared unconstitutional in State *v.* Ferris, *ibid.*, 314. In the first of those cases the act was held invalid because it exacted an attorney fee from a class of defendants to which parties in no other class of actions were subject; and in the other case the law failed because it laid a burden in the nature of a tax, unequally upon property. The principle of those cases does not apply here.

In giving construction to the statute, it is claimed in support of the judgments below, that to make a case for a change of venue, the affidavit of the party who makes the application, and those of the five persons filed to sustain it, must each contain a statement of the facts on which the affiant founds his belief that a fair trial cannot be had in the country, in order that the court may determine whether satisfactory grounds of such belief are shown; and that, in passing upon that question, as well as upon the credibility of the affiants, the court is clothed with discretionary power to grant or refuse the application. That construction, it is obvious, would add materially to the statute, for it contains no requirement that the affiants shall show grounds for their belief that are satisfactory to the court, nor state any grounds therefor. It is the existence of their belief when stated in the affidavits, and not the existence of reasonable grounds for the belief, that fixes the right of the party to a change of venue in cases mentioned in the statute. It is, therefore, sufficient for the applicant to state in his affidavit that he "cannot, as he believes, have a fair and impartial trial" in the county; and the application is "sustained" within the purview of the statute, when there is also filed the affidavits of five credible persons residents of the county who state therein that they each entertain the same belief. When this is done, it is made the imperative duty of the court where the action

is pending to "change the venue to the adjoining county most convenient for both parties." There is no discretion, in this respect, lodged with the court; and the statute was purposely made so, for otherwise its effect would practically be the same as the preceding section, and it would avail nothing. If an attack be made upon the character of the affiants' truth, the court must determine whether they are credible persons, and unless found to be so, the application may be denied. But in the absence of such attack, their credibility is presumed, and testimony in their support is neither required nor admissible. So, the application should not be granted unless the action be one that is within the terms of the statute, that is, an action in which "a corporation having more than fifty stockholders is a party," and is pending in the county where "the corporation keeps its principal office or place of business." The statement of these facts in the affidavits is open to controversy, and when put in issue the burden is on the party making the application to establish them. But the statement of the affiants' belief is not issuable. The affidavits filed in support of the plaintiff's application were in due form, and sufficient in substance; and being uncontroverted, the plaintiff was entitled, of right, to have the venue changed to an adjoining county.

It remains to inquire whether, as contended in behalf of the defendant, the plaintiff's right to prosecute error to the circuit court was barred or waived. This contention is based upon the claim that the order overruling the application was a final order in a special proceeding from which error should have been prosecuted within the statutory period after the order was made. That period had elapsed; but the proceeding in error was commenced within the required time after final judgment was rendered in the case. It seems clear the order was not one made in a special proceeding. The application was made in a pending civil action, and was one authorized to be made in such an action.

It was a step taken in that action preliminary to its trial, and one which, to be of any avail, it was necessary should be taken before the trial. It was proper to save an exception, as was done, to the overruling of the application, and take a bill of exceptions to properly preserve the question thus raised, upon the record. The order, nevertheless, was but an interlocutory one in the progress of the case, which could not be made the foundation of an independent proceeding in error, but was properly reviewable on error prosecuted to the final judgment. And, for this reason, the plaintiff did not waive the error in the overruling of his application, by thereafter submitting to the trial of the action without objection. There was nothing else to be done except to dismiss the action; for until final judgment he could not have the error corrected, or be restored to his right to have his change of venue.

With respect to the position advanced in argument that the plaintiff's right was barred by a previous denial of a similar application to which no exceptions were preserved, it is enough to say, the record is insufficient to present the question. It does not appear upon what grounds the former application was made, or denied, nor whether it was made under this statute or the preceding section. Nor was any objection made to the second application, or its consideration by the court. From the fact that the court entertained this application, considered and acted upon it without objection of any kind, it may safely be presumed that it was made upon different grounds, and that there were sufficient reasons why the court should allow it to be filed, and pass upon it, and give the plaintiff opportunity to save the question by bill of exceptions.

Judgment of the circuit court and of the court of common pleas reversed, and cause remanded to the common pleas with directions to grant the change of venue.

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Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 124.

THE CINCINNATI STREET RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

CHARLES B. SNELL.

BRIEF FOR DEFENDANT IN ERROR.

JOHN W. WOLFE,
THOS. L. MICHIE,
Counsel for Defendant in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 9315

(18,656.)

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 124.

THE CINCINNATI STREET RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

CHARLES B. SNELL, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

BRIEF FOR DEFENDANT IN ERROR.

We have not been furnished with a copy of the brief of the plaintiff in error and will confine our efforts to showing that the decision of the Supreme Court of Ohio in this case is not in conflict with the Constitution of the United States, and particularly with article 14 in amendment thereof, which is the assignment of error made by the plaintiff in error.

We cite a few authorities showing that section 5033 of the Revised Statutes of Ohio is not unconstitutional, in that it

does not impose a *penalty*, neither is it *class legislation*, but merely furnishes a rule applicable to all parties similarly situated, and coming within the terms of its provision, by which to guarantee to every one a fair trial free from all local influences.

There is no presumption that one court created by the laws of the State of Ohio will not give just as fair a trial as any other court in the same State. This court has always leaned to the construction of State statutes by the courts of last resort of the State.

"But in determining whether the legislature in a particular enactment has passed the limits of its constitutional authority, every reasonable presumption must be indulged in favor of the validity of such enactment. It must be regarded as valid unless it can be clearly shown to be in conflict with the Constitution. It is a well-settled rule of constitutional exposition that if a statute may or may not be, according to circumstances, within the limits of legislative authority, the existence of the circumstances necessary to support it must be presumed."

Sweet vs. Rechel, 159 U. S., 380–392.

Pressler vs. Illinois, 116 U. S., 252, 269.

The fourteenth amendment does not enlarge the privileges or immunities of a citizen of the United States, but furnishes a guaranty for existing privileges and immunities and prohibits the State from abridging them.

Bradwell vs. The State, 16 Wall., 130.

In re Lockwood, petitioner, 154 U. S., 116.

The fourteenth amendment does not profess to secure to all persons in the United States the benefit of the same laws

and the same remedies. Great diversity in these respects may exist in two States separated by an imaginary line. On one side of this line there may be a right of trial by jury, and on the other side no such right. Each State prescribes its own modes of judicial proceeding.

Missouri vs. Louis, 101 U. S., 22, 31.

There is no constitutional objection to legislation that is special in its character. A statute abolishing the defense of co-servant in railway injuries, does not deny to railroads the equal protection of the laws.

Missouri Ry. Co. vs. Mackey, 127 U. S., 205, 209.

To same effect see—

Missouri Pac. Ry. Co. vs. Humes, 115 U. S., 512.
Minn. R. Co. vs. Beckwith, 129 U. S., 26.
Minn. & St. L. Ry. vs. Emmons, 149 U. S., 364.
St. Louis & San Fran. Ry. Co. vs. Mathews, 165 U. S., 1.
Hayes vs. Missouri, 120 U. S., 68.
Bell's Gap Ry. Co. vs. Pennsylvania, 134 U. S., 237.
Atchison, Topeka & Santa Fe R. R. Co. vs. Mathews, 174 U. S., 96.

In this last case, from a careful perusal of the minority opinion of the court, the law seems to be concededly settled in favor of the validity of section 5033, Revised Statutes of Ohio.

See also *Waters-Pierce Oil Company vs. Texas*, 177 U. S., 28.

The States may regulate trials in their own courts in their own way.

Walker vs. Sauvinet, 92 U. S., 90.
Gut vs. The State, 9 Wall., 35.
N. Y., &c., R. Co. vs. N. Y., 165 U. S., 628.

In *Snell vs. The Cincinnati Street Railway Company*, 60 Ohio State, 256, the supreme court of Ohio held that section 5033 of the Revised Statutes of Ohio is not in conflict with the State or Federal Constitution. The very able opinion of our Supreme Court in this case by Williams, J., is found commencing on page 266, 60 Ohio State, and is a more learned and stronger argument than we feel able to attempt. Our court has ably discussed the very question raised in this court, and we are well content to rest our cause upon this solid foundation.

Respectfully submitted.

JOHN W. WOLFE,
THOS. L. MICHIE,
For Defendant in Error.

Supreme Court of the United States.

No. 124.—October Term, 1903.

The Cincinnati Street Railway Company, Plaintiff in Error, *vs.* Charles B. Snell.	In error to the Supreme Court of the State of Ohio.

[February 23, 1904.]

Mr. Justice White delivered the opinion of the Court.

Snell, the defendant in error, sued the railway company, the plaintiff in error, in the Common Pleas Court of Hamilton County, Ohio, to recover for alleged personal injuries. Availing of a section of the Ohio statutes, Snell moved that the cause be transferred for trial to the Court of Common Pleas of an adjoining county, and reserved an exception to a denial of such request. The trial resulted in a verdict in favor of the railway company.

Error was prosecuted by Snell to the Circuit Court of Hamilton County, and the judgment being affirmed in that court the case was taken to the Supreme Court of Ohio. The error complained of was the refusal of the trial court to grant a transfer of the cause. The railway company insisted in both courts that the transfer had been rightly refused on technical grounds, and because the State statute upon which the transfer was asked was repugnant to the Fourteenth Amendment to the Constitution of the United States. The Supreme Court of Ohio decided that under the State statute the court should have transferred the cause and that the statute which required this transfer was not repugnant to the Fourteenth Amendment. (60 Ohio St. 256.) The case was then brought to this court by the railway company and was dismissed because the judgment of the Supreme Court of the State was not final. (*Cincinnati Street Railway Company* v. *Snell*, 179 U. S. 395.) The cause thereupon proceeded in the State court and was transferred from Hamilton County to the Common Pleas Court of an adjoining county, where a trial was had, which resulted in a verdict and judgment in favor of Snell. The railway company prosecuted error to the Circuit Court of the county, and, failing to secure a reversal in that tribunal, carried the case to the Supreme Court of Ohio, by which court the judgment of the trial court was affirmed. In all the courts the railway company reiterated its contention concerning the repugnancy to the

Constitution to the United States of the statute providing for the transfer of the cause, and its claims on this subject were expressly overruled. This writ of error was thereupon allowed.

Section 5030 of the Revised Statutes of Ohio, upon which the application for the transfer of the cause was allowed, is as follows:

"When a corporation having more than fifty stockholders is a party in an action pending in a county in which the corporation keeps its principal office, or transacts its principal business, if the opposite party make affidavit that he cannot, as he believes, have a fair and impartial trial in that county, and his application is sustained by the several affidavits of five credible persons residing in such county, the court shall change the venue to the adjoining county most convenient for both parties."

The Supreme Court of Ohio, in disposing of the objection that the statute was repugnant to the equal protection and the due process clauses of the Fourteenth Amendment, among other things, said:

"We are unable to adopt that view. It has never been regarded as essential to the validity of remedial procedure that it should be applicable in all of its provisions to all persons or parties, alike. Different situations and conditions often render appropriate and necessary different provisions, the necessity or propriety of which rests largely in the legislative discretion.

* * * * * *

"Generally, actions against individuals must be brought in the county where the defendant resides or may be personally served with process; and generally, actions against corporations are required to be brought in the county in which the corporation is situate, or has its principal office or place of business, or an office or agent; while insurance companies may be sued in any county where the cause of action or any part of it arose, a mining corporation in any county in which it owns or operates a mine, and a railroad company in any county into which the road runs. Of a like nature are regulations for changes of venue. They are designed to secure to parties a fair and impartial trial of their causes, which is the ultimate and highest purpose of judicial proceedings; and the extent to which such regulations may go, for the accomplishment of that purpose, is addressed to a sound legislative discretion, in view of the nature of the case to be provided for, and the probable conditions likely to arise."

And in further commenting upon the effect of the remedy which the statute afforded upon the substantial rights of the parties, the court observed:

"In neither case, however, is any party deprived of the equal protection of the law, for each is assured of a fair trial, with equal opportunities to establish and enforce his rights; nor is the remedy by due course of law denied, because in the forum to which the cause is removed, the trial is conducted in the same way, under the same mode of procedure, as in that from which it was changed, with all remedial rights of the parties unimpaired. The only complaint is that the trial will be attended with some inconvenience and additional expense; but in that respect both parties are

equally affected, and must necessarily be so in any change of venue for any cause; and the objection is, we think, insufficient to annul a statute, otherwise unobjectionable, which, in the legislative estimation, was demanded in order to secure the impartial administration of justice."

None of the errors assigned or arguments advanced to sustain them pretend that any unequal law governed the trial of the cause in the courts below or that the result of such trial was a denial of the equal protection of the laws. The sole contention is that the equal protection of the laws was denied because an equal opportunity was not afforded to secure a transfer of the cause from the court in which it was originally brought to the court in which it was ultimately tried. Thus, it is argued that the plaintiff Snell under the statute was given the right to have the cause transferred whilst a like right was not conferred on the corporation; that the existence of prejudice justifying the transfer was made by the statute to depend upon the domicil and number of stockholders in the corporation, while no equivalent right was given the corporation growing out of any prejudice which might have existed against the corporation, it being moreover asserted that the causes stated in the statute as basis for the transfer furnish no just ground for the classification made by the statute. The entire ground, therefore, relied on to show that the statute is repugnant to the Fourteenth Amendment rests upon the assumption that such amendment not only secures that the rights and obligations of persons shall be measured by equal laws, but also that the provisions of the amendment control the States in the creation of courts and in the provisions made for the trial of causes in the courts which are created.

This proposition, however, was long since decided to be untenable. (*Missouri* v. *Lewis*, 101 U. S. 22; *Chappel Chemical & Fertilizer Company* v. *Sulphur Mines Company*, 172 U. S. 474.) In the first of these cases it was directly held that the Fourteenth Amendment did not operate to deprive the several States of the complete power to create such courts as were deemed essential, and to endow them with such jurisdiction as was considered appropriate. This being true, it follows, as the lesser is contained in the greater power, that the State law which authorized under enumerated circumstances and conditions the transfer of the cause from one court to another, was equally unaffected by the provisions of the Fourteenth Amendment. But conceding, *arguendo*, the contrary, this case is without merit.

As previously shown, the Supreme Court of the State of Ohio pointed out in its opinion that the rights of the parties were governed in the court to which the case was transferred by the same law and the same rules which would have prevailed had the case been tried in the court in which it was originally brought. And this has not been challenged either by the assignments of error or any of the arguments made to sustain them.

The proposition to which the case reduces itself is therefore this: That although the protection of equal laws equally administered has been enjoyed, nevertheless there has been a denial of the equal protection of the law within the purview of the Fourteenth Amendment, only because the State has allowed one person to seek one forum and has not allowed another person, asserted to be in the same class, to seek the same forum, although as to both persons the law has afforded a forum in which the same and equal laws are applicable and administered. But it is fundamental rights which the Fourteenth Amendment safeguards and not the mere forum which a State may see proper to designate for the enforcement and protection of such rights. Given therefore a condition where fundamental rights are equally protected and preserved, it is impossible to say that the rights which are thus protected and preserved have been denied because the State has deemed best to provide for a trial in one forum or another. It is not under any view the mere tribunal into which a person is authorized to proceed by a State which determines whether the equal protection of the law has been afforded, but whether in the tribunals which the State has provided equal laws prevail.

It follows that the mere direction of the State law that a cause under given circumstances shall be tried in one forum instead of another, or may be transferred when brought from one forum to another, can have no tendency to violate the guarantee of the equal protection of the laws where in both the forums equality of law governs and equality of administration prevails. In *Iowa Central Railway Company* v. *Iowa*, (160 U. S. 393,) this court said:

"But it is clear that the Fourteenth Amendment in no way undertakes to control the power of a State to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided. This being the case, it was obviously not a right, privilege or immunity of a citizen of the United States to have a controversy in the State court prosecuted or determined by one form of action instead of another."

And the same principle was reiterated in *Backus* v. *Fort Street Union Depot Company*, (169 U. S. 557, 569,) and in *Wilson* v. *North Carolina*, 169 U. S. 586.) It was further expressed in *Williams* v. *Eggleston*, (170 U. S. 304,) and in *Louisville & Nashville Railroad Company* v. *Schmidt*, (177 U. S. 230.) The cases decided in this court which are relied upon at bar to sustain the contrary contention are not apposite. They are *Gulf, Colorado & Santa Fe Railroad Company* v. *Ellis*, (165 U. S. 150;) *Cottin* v. *Kansas City Stock Yard Company*, (183 U. S. 79,) and *Connolly* v. *Union Sewer Pipe Company*, (184 U. S. 540.) Each of these cases involved determining whether the provisions of particular State laws were so unequal

in their operation upon the rights of parties as to engender the inequality prohibited by the Fourteenth Amendment. None of the cases, therefore, lend support to the proposition upon which this case depends; that is, that although there has been no denial of the equal protection of the laws, nevertheless such denial must be held to exist only because the State has seen fit to direct under particular conditions a trial of a cause in one forum instead of in another, when in both forums equal laws are applicable and an equal administration of justice obtained.

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.